

Our Thanks . . .

To the women who shared with us their frustrations and triumphs in resolving problems at work. Without their courage, this guide would not be possible.

To the people who talked with us about their work dealing with complaints - as Edmonton Working Women does - and our fight against human rights abuses.

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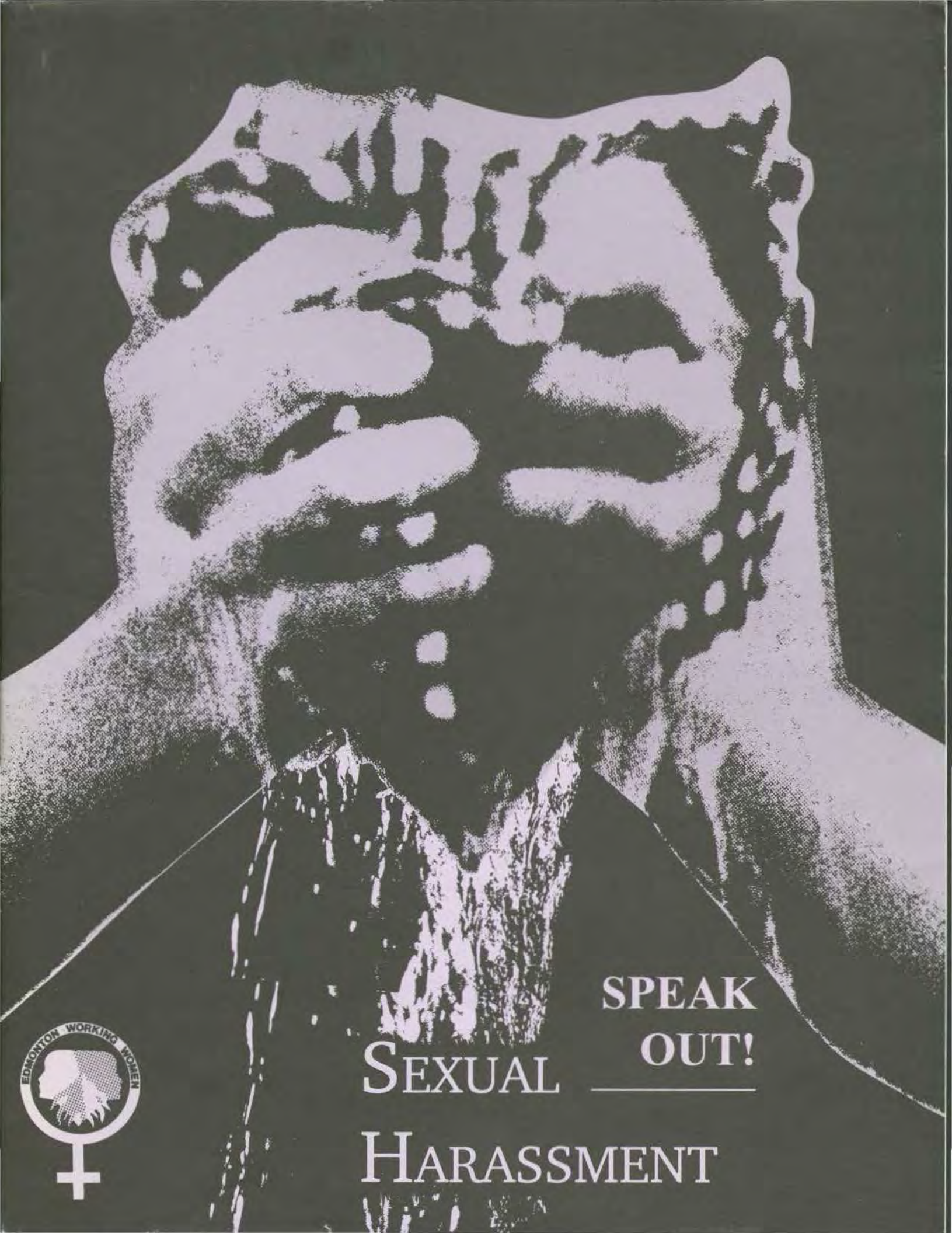
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**SPEAK
OUT!**

SEXUAL

HARASSMENT



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1 Edmonton Working Women

In 1982, Edmonton Working Women (EWW) became a working women's collective based on feminist principles in response to the way women's work goes unrecognized, whether it be paid or unpaid labour. EWW is committed to changing this situation. Our goals are better wages, working conditions and job security for women. We need comprehensive employment laws that provide health and retirement benefits for all, eliminate exclusions and prohibit harassment, and ensure fair wages. We must remove barriers that have traditionally restricted access to jobs and equitable pay. To reach these goals, our equal participation in the workforce must include better support services, such as childcare. Alberta's labour laws must be changed. They do not fully protect workers, especially women, and they discourage unionization.

In response to the gender inequities in the workplace, EWW set up the Working Women's Hotline in 1985. When women call our hotline, trained hotline workers outline the formal and informal options available to try to rectify workplace problems. Since the hotline's inception, one of the most common complaints has been sexual harassment. Sexual harassment must be dealt with until institutional changes and societal attitudes render it obsolete.

2 About this Project

Late in the fall of 1991, EWW was grappling with the cases of several women who had called our Working Women's Hotline. Their sexual harassment complaints all seemed headed for disappointing conclusions. None of them were still employed where the harassment had occurred. All of them were picking up temporary work when they could and all faced the dilemma of whether or not to tell prospective employers why they had **really** left their previous jobs. Some were seeing their doctors and counsellors regularly and were prescribed mood-altering drugs to counter depression and anxiety. All of them had endured long periods of sexual harassment and were emotionally worn down. A prolonged period of harassment of any kind erodes the recipient's self-esteem and creates mistrust of others and even of oneself. They were disillusioned with their treatment by formal complaint processing bodies and they were questioning whether or not they should have initiated formal complaints.

Sharing their disappointment with and anger at the apparent ineffectiveness of complaint bodies led us to a systematic evaluation of the various complaint processing bodies. In addition, we hoped to recommend improvements to the various complaint systems. We wanted to illustrate the experiences of women who had laid complaints with various agencies whose policies prohibit sexual harassment and the way these policies and procedures are enforced. To do so, we interviewed complainants and those people who process sexual harassment complaints. We were looking for stories and descriptions. Once we began hearing experiences repeated during subsequent interviews, we would know that we had found the common threads which would lead to our conclusions. Thus, the number of informants was limited to ten in each of the two categories.

While the vast majority of victims/survivors of sexual harassment are women, we realize that men can be sexually harassed too. Though most sexual harassers are male, we acknowledge that women can sexually harass. The underreporting of sexual harassment in general, and the few men that ever complain of sexual harassment, provide little insight into the sexual harassment of men. Men have called our hotline for information about sexual harassment, but have not identified themselves as victims/survivors. The limited information on male victims/survivors suggests the effects differ somewhat from the experience of female complainants. Our research focuses on the effects of sexual harassment on women. Throughout this report, we refer to the harasser as male and to the victim/survivor as female.

Each of the women interviewed had complained of sexual harassment through different channels. The various complaint routes differ in their definitions of sexual harassment, time limits to lay complaints, willingness to pursue complaints and in their investigation procedures. This presents complicated questions for women about how to proceed with complaints. This report attempts to identify the problems women have in laying sexual harassment complaints and it also attempts to provide recommendations on how to improve the procedures and policies of formal complaint processing bodies.

3 Women's Position in the Workforce

In today's working world, women are employed in a wide variety of occupations. Women make up 45 percent of the Canadian workforce and accounted for almost 75 percent of all growth in employment between 1975 and 1991. Forecasts suggest that by the year 2005, women's participation rate will have increased to 63 percent from 58 percent in 1991. (*110 Canadian Statistics on Work and Family: Background Paper*, 1994, p. 3) Two parent families where both work outside the home far outnumber the traditional family with the wife at home. It is estimated that nowadays a family has to work 65 - 80 hours per week to maintain the same income that a single breadwinner could obtain from 45 hours of work in the 1970s. Also, more women are raising their children alone than ever before. While women are becoming an established part of the workforce, the struggle to reach higher paid and higher status positions continues.

Women make up almost half the Alberta paid workforce, and their numbers are increasing every year. In Alberta, women earn only 70 percent of what the average man earns in full-time, full-year employment. In 1992, the average wage for women was \$27, 242 while the average wage for men was \$38, 737. (Statistics Canada) The majority of employed women are in "pink-collar job ghettos" — those low paying, low status, service, clerical and retail jobs which have traditionally been seen as "women's work". Very few of these occupations are unionized.

Recent economic and social changes such as cuts in social programs, increased job losses and a rise in unprotected employment have had a large impact on Albertans, particularly women, making a bad situation worse. The effects of restructuring the workforce are severe. It is resulting in a labour market which is increasingly polarized — some workers with "good jobs" (i.e. long term, high waged jobs with adequate benefits and protections), and other workers with "bad jobs" and very little chance of improving their situation. In their search for ways to cut costs, governments and businesses alike are using non-standard workers such as part-time workers, temporary workers, homeworkers and independent contractors. These workers tend to be poorly paid compared to their full-time counterparts, have little job security and certainly have less access to benefits. Women who are doubly disadvantaged by race, physical and/or mental ability, age, religion, language, ethnicity or sexual orientation face further problems.

There has been a decline in the relative number of jobs in the higher paying goods producing sector and an increase in the number of jobs in the lower paying service sector. This trend towards de-industrialization and the rise of a service-based economy includes the loss of 80,000 jobs in the Canadian manufacturing industry since the implementation of the Canada-U.S. Free Trade Agreement in 1989. At the same time the number of homeworkers (who are mostly women) is rising, doing everything from telecomputer work, such as health care billing, to handicrafts.

Historically, the contributions of unpaid domestic labour have been ignored. It is estimated that women's unpaid work accounts for one third of the Gross National Product. Recognizing the enormous devaluation of women's paid and unpaid labour is central to understanding women's place in the workforce.

Pioneer feminist, Nellie McClung said, "people must know the past to understand the present and the future." Traditionally, women's work was close to the home and involved looking after the family. In some cultures, women were highly valued and given power and influence. For example, Huron women elected men to their governing council, and Iroquois women voted on matters of war and peace. One result of the Industrial Revolution was that men started going out to work for wages, and the division between men's and women's work widened. Money meant power and women's work was, and continues to be, mainly unpaid or underpaid.

***People must
know the past to
understand the
present and the
future.***

***Nellie McClung
Pioneer Feminist
1873 - 1951***

4 Research Description and Method

A committee of Edmonton Working Women formulated the following research assumptions:

1. Women are sexually harassed in the workplace.
2. Sexual harassment is harmful to women.
3. Any woman can be sexually harassed regardless of class, age, level of education, ancestry, race, religious/political beliefs, sexual preference, marital status, appearance, physical or mental ability.
4. Our hotline callers believe formal remedies to sexual harassment are unsatisfactory.
5. Women who are satisfied with the resolution of their sexual harassment complaints do not call our hotline for assistance.

Our research goals were to determine the following:

1. Whether or not the mechanisms used to resolve sexual harassment complaints are satisfactory.
2. How those mechanisms found to be unsatisfactory can be improved.

To recruit informants, public service announcements and posters were sent to Edmonton media outlets, unions, women's groups, various community agencies and the local offices of the provincial and federal human rights commissions. Our project coordinator was interviewed by both the *Edmonton Journal* and *Edmonton Sun* newspapers. The subsequent articles brought calls from women who had been sexually harassed at work. All of these women were glad to have learned of Edmonton Working Women and wished they had known of our services earlier. To qualify as research informants, they had to have taken formal action to try to resolve the sexual harassment. Other inquiries that resulted from our publicity were from people who deal with sexual harassment complaints. They were interested in receiving our research report and hoped it would help define the "grey areas" of deciding the outcomes of complaints.

Our exploration and analysis of the realities of formally resolving sexual harassment complaints is based on the available literature on the subject, the results of the interviews conducted by Edmonton Working Women's research coordinator and our experiences taking hotline calls. Interviews with the respondents were tape recorded and transcribed.

By guaranteeing confidentiality to the people we interviewed, we hoped to get at the reality of what women face when proceeding with sexual harassment complaints. Not all our informants desired confidentiality. The regional director of the Canadian Human Rights Commission (CHRC) simply said it was part of her job and did not offer any insights beyond the information already available in CHRC brochures. A former executive director of the Alberta Human Rights Commission was publicly critical of the Commission's problems and thought the public had a right to know about them.

Of the women who had laid complaints, those most concerned about confidentiality did not have steady jobs and were still looking for work in the fields they had left due to sexual harassment.

The basic interview questions for the complainants were:

1. When were you sexually harassed? Where did you work? What was your job? Who was/were the harasser(s)?
2. How long after the incident(s) of sexual harassment did you complain? To whom?
3. How did you feel at the time of making the complaint?
4. How was the situation resolved? When was the case closed?
5. Were you still employed in the same job when the case was closed? How did you feel at the time of the settlement?
6. What, if anything, was or would have been helpful to aid you in coping with the experience? How do you feel about EWW's response to your case [if EWW was involved]?

The basic interview questions for the complaint processors were:

1. What are your title and duties? What are your qualifications? What kind of training was provided by your employer? Did you receive any training to prepare you for dealing with sexual harassment complaints specifically?
2. Is impartiality and confidentiality expected of you when processing complaints? How do you maintain it?
3. How many complaints, on average, does your agency/department receive per month? How many are included in your monthly caseload? How many complaints are followed through to settlement compared to those dropped before settlement? Who usually decides to drop complaints and why?
4. Upon first contact with your agency/department, a complainant may simply describe the situation in which s/he finds her/himself. Is this information recorded? If so, where? Is it automatically accepted as a complaint? How do you decide if you can accept a complaint?
5. How do you inform complainants of your agency/department's complaint-resolution process? If an informal complaint is accepted before a formal one, how do you decide when it merits formal investigation?
6. When proposing a settlement to both parties, upon what do you base it?
7. What, if anything, has been or would be helpful to aid you in processing sexual harassment complaints?

Some mention must be made of the limitations imposed by the nature of our data source. In interviewing complaint processors, we attempted to choose a representative group: union representatives, human resources

personnel, litigation lawyers, the Alberta Human Rights Commission, the Canadian Human Rights Commission and the Workers' Compensation Board of Alberta. Since the scope of this report doesn't include educational institutions or criminal aspects of sexual harassment, we excluded data from post-secondary human rights officials and the police. Of the complainants who participated in our research, all were female and all were white except for one member of a racial minority. None were recent immigrants to Canada and all were very fluent in English. The complainants all described similar feelings and barriers in filing complaints, achieving satisfactory settlements, resolving the issue, and coming to terms with the harassment itself. We have observed similarities among sexual harassment cases since we started taking and documenting hotline calls in 1985. Undeniably, more and more women are aware of what sexual harassment is and more and more women are attempting to do something about it, even if that action is to leave their workplaces.

5 What is Sexual Harassment?

One of the most pervasive and threatening phenomena in the workplace is sexual harassment. It affects women and men alike. The Canadian Human Rights Commission reported that 49 percent of women in the workforce have experienced at least one type of unwanted sexual attention. (Canadian Human Rights Commission. *Unwanted Sexual Attention and Sexual Harassment: Results of a Survey of Canadians*, 1983, p. 5). In Alberta, of all human rights complaints, during the 12 months ended March 31, 1993, 54 percent were gender related, and 19 percent were on the grounds of sexual harassment. But, in employment related complaints, 62 percent were gender related, and 23 percent were on the grounds of sexual harassment. This is the highest it has ever been as a proportion of complaints since the Commission started keeping sexual harassment statistics.

Sexual harassment is prevalent in virtually all professions and places of work. For example, an Alberta survey found that 64.7 percent of women respondents and 32.1 percent of men respondents witnessed male lawyers making unwanted sexual advances to female lawyers. (Page and Springer: 1992, p. F1) Through our Working Women's Hotline, we hear from women who are experiencing a variety of types of problems at work. Increasingly, a large proportion of our callers are asking questions and raising concerns about sexual harassment.

Sexual harassment is one form of sex (gender) discrimination. It is unwanted and unwelcome sexual behavior. What must be understood is that sexual harassment in the workplace is perpetuated and continued because inequalities between women and men exist at work, in the home and in society at large. Sexual harassment is not about sexual attraction, it is about exerting power over another person. An authority on sexual harassment has noted that:

Sexual harassment is a complex issue involving men and women, their perceptions and behavior, and the social norms of the society. Sexual harassment is not confined to any one level, class, or profession. It can happen to executives as well as factory workers. It occurs not only in the workplace and in the classroom, but even in parliamentary chambers and churches. ... Whether it is from supervisors, co-workers, or customers, sexual harassment is an attempt to assert power over another person.

(Aggarwal, 1992, p.1)

In addition, former Chief Justice Dickson of the Supreme Court of Canada has provided a definition of “gender harassment” at work:

Without seeking to provide an exhaustive definition of the term, I am of the view that gender harassment in the workplace may be broadly defined as unwelcome conduct of a gender nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment ... Gender harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome gender actions or explicit gender demands, gender harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

*(Janzen v. Platy Enterprises Ltd. [1989]
1 S.C.R. 1252 at 1284.)*

Sexual harassment is an expression of power and violence. It is not to be confused with mutually acceptable banter or flirtation. Sexual harassment is unwanted and aggressive. Sexual harassment can be classified into two types: “quid pro quo” (sexual favours for workplace benefits) and “hostile environment” (general negative effect on the workplace).

These two categories are not mutually exclusive. In fact, as soon as sexual harassment is committed, the working environment becomes offensive and hostile for that employee or group of employees. The offensive and hostile working environment becomes aggravated when the harasser punishes the victim/survivor who resists sexual advances with job-related reprisals. Courts and tribunals have also used the terms "atmosphere of discrimination" and "sexually derogatory work environment" to describe a workplace which is poisoned by sexual harassment. An Ontario Human Rights Board of Inquiry has pointed out that employees have the right to a workplace free from harassment, and that the atmosphere of the workplace is a term or condition of employment, just as much as more visible terms or conditions (such as hours of work or rate of pay). (*Dhillon v. F. W. Woolworth Ltd.*, Ont., 1982, 3 C.H.R.R.D./743)

Sexual harassment may be subtle or obvious, verbal or non-verbal. It can include:

- verbal abuse
- unwelcome remarks, jokes, innuendoes or taunting about a woman's clothing, body, or sexual activities; such comments may be said directly to a woman or made in reference to other women
- display of pornographic pictures or objects
- unwelcome invitations to engage in sexual behavior
- leering
- unnecessary physical contact such as touching, patting or pinching
- demands for sex in return for keeping or getting a job, promotion or other benefit
- physical assault
- any perceived threat of retaliation.

The power differential in society between men and women is transported into the work environment. Sexual harassment can threaten a woman's economic livelihood, as well as her emotional, mental and physical well-being.

Sexual harassment is often condoned or excused by common myths about women, for example, that she "asked for it" by the way she dressed or the way she walked or talked. Harassers will often excuse their inappropriate behavior by insisting that the victim/survivor "led him on" or that she could not take a joke. Some women think that sexual harassment only happens to "those kind of women". It could never happen to them because they would not allow it. Unfortunately, sexual harassment is often subtle and the victim may not initially recognize the behavior as sexual

harassment. Some hotline callers have said that they would engage in joking and “kidding around” with co-workers and supervisors even if it made them feel uncomfortable because they did not want to be labelled as “uptight” or unfriendly. Other callers and complainants have said that they were not aware that the behavior constituted sexual harassment. As one complainant recalled: “... that’s the thing, like this is how I grew up. I didn’t know this was wrong because I’d been treated like that all my life by different men who shouldn’t have been treating me like that.” The pressure on women and men to maintain the status quo by ignoring offensive behavior is tremendous.

In certain workplaces, sexual harassment may be condoned and seen as normal behavior or even as part of the job. “A hostile or offensive workplace for women is created by repeated subtle, yet unwelcome, harassing behavior. This is sometimes called the ‘poisoned’ work environment.” (*Employer’s Guide*, 1993, p. 1) “The legal recognition that a sexually derogatory work environment in and of itself violates human rights statutes is particularly helpful in constructive discharge cases where it is necessary to prove that the atmosphere or conditions were so intolerable that the complainant was forced to leave her job.” (Aggarwal, 1992, p. 155-56) For example, bar waiting staff may be forced to wear revealing uniforms as a condition of their work. Since this industry is dependent on tips to top up their low wages, many women may be reluctant to complain to their employers. Customers and co-workers may feel that they have a right to make sexual advances because of the way that the servers are dressed. Some servers in this situation have appropriately compared their professions to prostitution.

Reports of sexual harassment are not “isolated incidents” as they are commonly viewed. Rather, this treatment of women by men is part of the continuum of violence against women in our society. Sexual harassment usually evokes fear in the woman subjected to it: fear for her own safety, fear for her job, fear of returning to the worksite, fear of losing her sanity, fear of alienating her co-workers or fear of lack of support and understanding from her friends and family. Intimidation and the threat of violence, whether actual or perceived, are part of the power exercised by the harasser.

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6 Psychological Effects of Sexual Harassment

I've never met such psychologically fragile people as people who have gone through a long period of harassment. In my mind, it's something like women who've been battered. They're very vulnerable, very easily mistreated by others including professionals.

(Litigation Lawyer, 1993)

Women experiencing sexual harassment suffer psychological stress. Some experience only minimal distress but many of our callers and all of our respondents reported moderate to severe effects. They reported and exhibited: confusion, job dissatisfaction, poor job performance, lack of motivation, fear, self blame, lack of concentration, sleeping problems, eating problems, isolation, helplessness, irritability, anger, memory loss, panic attacks, flashbacks and even suicidal thoughts. In some cases these women are eventually diagnosed by mental health professionals as having clinically significant conditions and disorders, often anxiety and depression, and even post traumatic stress disorder.

Sexual harassment is one form of violence against women. Consequently, many women react in the same manner when they are sexually harassed as when they are physically or sexually assaulted. The responses of victims/survivors may result from the sexual harassment incident or incidents, attempts to stop or resolve the experience or experiences, from the failure of the employer to acknowledge or stop the situation, and from retaliation. The most severe reactions seem to come from women who have gone through with formal complaints, and from those women previously emotionally, physically and/or sexually abused. One complainant said that she does not have flashbacks about a past sexual assault; she has flashbacks about the sexual harassment. Another complainant said that "they [her employers] made me feel insane ... that I'd imagined it all." In fact, several women reported that the experience of going through with their complaints was worse than the sexual harassment itself. Recovery times vary significantly, depending on numerous factors.

Edmonton Working Women offers sexual harassment victims/survivors information, referrals and emotional support. We believe the women and do not blame them for the sexual harassment. Easy to understand, accurate information, appropriate emotional support, referrals, and believing the women have been identified as the kinds of assistance victims/survivors need most.

They made me feel insane ... that I'd imagined it all.

7 Taking Action

In many cases women feel forced to suffer sexual harassment in silence. The decision to remain silent and not to take action is often made after consideration of the possible consequences and repercussions. According to a survey by *Working Woman* magazine, 46 percent of women try to ignore sexual harassment. Only 40 percent told the harasser to stop and just 26 percent reported the harassment. Only 21 percent of readers agree that complaints are dealt with justly, and over 60 percent say charges are completely ignored or offenders are given only token reprimands. Fifty-five percent who have tried reporting harassment found that nothing happened to the harasser. (Sandroff, 1992, p. 50)

There are a number of formal and informal options available to victims/survivors who are experiencing or have experienced sexual harassment. The decision to pursue these options requires examining the pros and cons of each available action and an understanding of the results generally yielded by the actions. Often more than one action can be initiated. However, one option may limit or eliminate others. Some options defer investigation until the resolution of another, or others.

Others may simply quit their jobs and attempt to put their experiences behind them. This option fails to stop the harasser from finding future victims.

Almost all sexual harassers are repeat offenders.

Formal Actions

Formal bodies differ in their definitions of sexual harassment and what constitutes a "formal complaint". Time limits to lay complaints, legislation, policies and procedures also differ. These are subject to change and should be verified. Most of these bodies require that the victim/survivor has made genuine attempts to resolve the sexual harassment with the harasser(s) prior to their involvement in the case.

Very few sexual harassment victims make formal complaints of the harassment. Some calculations show that only five percent complain about this violation of their human rights. Instead, these women may tolerate the situation in order to keep their jobs, or, because they fail to identify the problem and place the responsibility on the harasser, they assume the blame. Others may simply quit their jobs and attempt to put their experiences behind them. This option fails to stop the harasser from finding future victims. Almost all sexual harassers are repeat offenders.

Employer Responsibility and Liability

The [1988 Working Woman Sexual Harassment Survey] suggests a major transformation in corporate attitudes Sexual harassment, once a feminist issue, has become a financial one, and substantial members of companies are reacting accordingly, treating the issue with seriousness and a significant investment of time and money.

(Sandroff: 1988, p. 70)

In a speech in January 1992, Douglas Baldwin, Senior Vice-President of Imperial Oil, estimated that sexual harassment costs the company almost \$8 million per year in absenteeism, employee turnover, and lost productivity. (Falardeau-Ramsay, 1994, p. 48) When employers choose to do nothing about sexual harassment the costs to both employees and employers can be high. Sexual harassment creates stress, anxiety, and subsequently poor job performance, low morale, absenteeism and a higher staff turnover. Preventing sexual harassment makes good business sense.

Employers must take responsibility for sexual harassment in their workplaces. It is the employer who has the power to prevent sexual harassment. He or she makes a great deal of difference in the workplace atmosphere and in the relationships between co-workers and between workers and supervisors. As mentioned earlier, the employer also benefits financially by reducing absenteeism and turnover, and increasing productivity. The stress related to sexual harassment can be so great that it affects even those employees who are not directly involved. Moreover, it is the employer's legal responsibility to create and maintain a workplace atmosphere free of sexual harassment. "The Supreme Court of Canada, in *Robichaud v. The Queen*, held that an employer can be liable for acts of sexual harassment by its employees, acting within the scope of their employment. The court emphasized that the employer is the party in the best position to protect and foster human rights in its workplace." (Wolpert and Sweatman, 1993, p. 36) If the employer has made genuine efforts to prevent harassment, and also takes appropriate actions to stop any current harassment and correct any damage, then liability may be limited to the harasser. If, however, the employer cannot demonstrate such efforts, there is clear risk of both direct and indirect ("vicarious") liability, against senior management as well as the corporation or organization. (*Employer's Guide*, 1993, p. 5)

An employer also may be liable for sexual harassment by non-employees, such as clients or customers. It is the employer's responsibility to ensure a workplace free of sexual harassment. To establish that an employer is liable, the complainant must prove that:

1. The employer had knowledge of or should have known of the harassment.
2. The employer failed to take reasonable measures to prevent or remedy the harassment.
3. The harassment affected the employee's term or condition of employment because it was sufficiently pervasive and severe to create an offensive working environment.

(Aggarwal, 1987, p. 142)

Many employers have started to take sexual harassment seriously. They are acknowledging the benefits of dealing with sexual harassment as an economically and socially damaging problem in the workplace.

Federal labour laws protect workers in banking, shipping, inter-provincial transportation, communications and broadcasting, crown corporations and federal agencies, the federal public service, uranium mines and grain elevators. This sector accounts for approximately 10 percent of the Canadian workforce. These workers fall under the jurisdiction of the **Canada Labour Code**. The **Canada Labour Code** says:

Sexual harassment is "any conduct, comment, gesture of a sexual nature that (a) is likely to cause offense or humiliation to an employee; or (b) might, on reasonable grounds, be perceived by that employee as placing a sexual condition on employment or any opportunity in training or promotion."

Part III, Division V. 9 Canada Labour Code

Alberta's labour standards legislation, **Employment Standards Code**, does not refer to sexual harassment. However, employees who fall under federal or provincial human rights legislation may be ordered to pay penalties if they are in contravention of this legislation.

There is a legislative basis to make a claim through the **Occupational Health and Safety Act**, but, in this climate of cutbacks, spot inspections of the workplace may not be a realistic alternative.

Human Rights Commissions

Role of the Commissions

Human rights commissions are designed to protect the rights of individuals and to educate people about their rights. In Alberta, the Alberta Human Rights Commission is responsible for administering the **Individual Rights Protection Act**. The Commission defines sexual harassment as any unwelcome behavior that is sexual in nature.

The **Canadian Human Rights Act** says that it is a discriminatory practice ... in matters related to employment, to harass an individual on a prohibited ground of discrimination. The *Act* also specifies that sexual harassment is "deemed to be harassment on a prohibited ground." (Sections 14(1) and 14(2) of the *CHRC*) Sexual harassment, being discrimination on the grounds of gender, is a violation of Alberta's *Individual's Rights Protection Act*. Unwanted sexual advances, unwanted requests for sexual favours, and other unwanted verbal or physical contact of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term of or condition of an individual's employment or
2. submission to or rejection of such conduct by an individual affects that individual's employment.

("Sample Sexual Harassment Policy", 92/03/015)

The definition of sexual harassment provided by the Alberta Human Rights Commission emphasizes that the behavior is considered sexual harassment when the behavior is unwanted.

Alberta's **Individual's Rights Protection Act** says that:

7(1) No employer or person acting on behalf of an employer shall ... (b) discriminate against any person with regard to employment or any term or condition of employment, because of the race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry or place of origin of that person or of any other person.

Although this subsection of the **Act** does not explicitly refer to sexual harassment, it is now established in Canada that sexual harassment of an

individual constitutes discrimination on the basis of gender. This point of law was established by the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd. et al.*, [1989] 1 S.C.R. 1252. The Supreme Court unanimously held that the sexual harassment of two female employees by a male co-worker constituted "discrimination on the basis of sex". Both the employer and the co-worker were held liable.

Human rights commissions have various powers that the courts do not have. For example, a Board of Inquiry under the **Individual Rights Protection Act** has the power to transfer and to reinstate a harassed employee, and they also have the power to order a sexual harassment policy.

Problems of the Commissions

A number of women have told Edmonton Working Women about experiences seeking assistance from the human rights commissions. Here is a summary of what they have said.

At first, sexual harassment victims/survivors are hopeful and relieved that there are bodies like human rights commissions to assist them. They go into the process feeling positive and optimistic. Unfortunately, after being told they do not have good cases, lengthy delays, telling their stories over and over again, being made to feel guilty and, in some cases, responsible for the harassment, victims/survivors lose hope and feel powerless once they have entered the bureaucracy of human rights commissions.

Complainants think that they are being taken advantage of by the institutions and their representatives, who assume control over their lives when they are most vulnerable. Many women who have laid complaints end up being very skeptical of the human rights commissions. One complainant reported that she was in a severe depression and her health was totally "wrecked" by the time she quit her job. It eventually took her three years to get her health back to normal. She also acknowledges that laying the complaint has destroyed her career. She no longer goes out on job interviews. She has basically given up on her chosen career. Although the human rights commissions are supposed to protect complainants from retaliation, this is very difficult in practice.

A major problem with the AHRC is that there seems to be no clear definition of what constitutes evidence of sexual harassment. Different AHRC investigators have given Edmonton Working Women different interpretations of what they consider to be evidence. Some investigators

seem to be biased against the complainant from the start. Others seem to be overly anxious to close the case so they can deal with their backlog of complaints. Under their load of complaints, the CHRC slowly sifts the stories of both parties, requiring constant prodding by complainants and their advocates or lawyers. If a dual complaint is filed with the Public Service Commission, the time taken by the bureaucracy is doubled.

Complainants have been told by Human Rights Commission investigators that in order to have a "good case" they must have witnesses. When there are witnesses, such as co-workers, most often they are unwilling to testify because they fear losing their jobs or they fear that they will be harassed as well. Even if co-workers were sympathetic to the victim's/survivor's situation, the majority of incidents of sexual harassment usually take place without witnesses. It is up to the victim/survivor to bring the issue forward and then to prove that it happened.

Too often, investigators imply that complainants have no evidence of the alleged sexual harassment, only their account of what happened. This behavior trivializes the woman's experience and weakens her already lowered self-esteem. AHRC investigators seem to take the roles of educators, mediators, investigators, arbitrators and adjudicators. Investigators are faced with a very difficult task playing all these roles while trying to remaining neutral. The investigator's role is simply to assess whether or not a complaint has merit, whether the alleged event could have actually happened. When they are making that decision, they must not judge either party's so-called credibility, particularly if conflicting stories have been given, as happens in almost all sexual harassment cases.

The standard of proof used in criminal court is "beyond a reasonable doubt". [footnote: According to the *Canadian Law Dictionary*, reasonable doubt "refers to the level of certainty needed by a juror to form a legally sound determination of the guilt of the accused. ... It means that the evidence must be so complete and convincing that any reasonable doubts of the facts are erased from the minds of the jurors."] In civil proceedings, the standard used is a "balance of probabilities", meaning that it is more likely than not that the alleged incident occurred. Some Alberta Human Rights Commission staff seem to impose a criminal burden of proof on human rights complainants. For example, a woman who was sexually assaulted by her supervisor was told by the criminal court judge that he had to acquit the accused because the charge could not be proven beyond a reasonable doubt. Yet, he said he found her testimony believable and left the door open for her to seek justice through the AHRC. Sadly, the AHRC informed her that, in accordance with the acquittal, there was not enough evidence to proceed with her case. She has since uprooted her family from their home in a small town due to the retaliation, intimidation and harassment they suffered during and after the court case.

The AHRC informed her that, in accordance with the [Criminal Court] acquittal, there was not enough evidence to proceed with her case.

Often, women report that the extent of their physical and psychological damage resulting from sexual harassment is minimized by investigators. Whereas those harassers who are in positions of power have many resources for their defence, victims/survivors rely on institutions like human rights commissions to assist them through the process. Human rights commissions do not charge a fee for their services and they maintain that complainants do not require a lawyer, yet many complainants reported that it was only once they hired a lawyer that their cases were looked at seriously. There is an imbalance of power between the complainant and the harasser. In most cases, the harassers have economic power over the complainants. Thus, harassers or their employers usually have the resources to proceed through the complaint process with the assistance of lawyers. One of the reasons that many victims/survivors who lay complaints with human rights commissions choose this route is because the services are free. Needless to say, they also trust the system and believe that the investigators are there to help them.

Victims/survivors need to feel secure when they are laying complaints. Their emotional and psychological needs are not being addressed by the human rights commissions. The commissions acknowledge that sexual harassment complainants may suffer emotionally more than other complainants, yet no attempts are made to alleviate the stress experienced by the victims/survivors. Many sexual harassment victims/survivors feel lost in the bureaucracy of the commissions. They look to their case investigators for support. Rather than receiving support, complainants report that the way the complaint process is described to them is difficult to understand, legalistic and structured. After experiencing sexual harassment, victims/survivors need to feel that they are in control of their lives. The complexity of the complaint process is very discouraging for most complainants. One woman said that the AHRC made her feel like just another complainant. She felt hopeless. She also said that the investigators are not very good listeners: "[t]hey just say go home and write it down."

In Alberta, the Human Rights Commission and the **Individual Rights Protection Act** were reviewed in 1994. Many significant changes were proposed by the Alberta Human Rights Review Panel. One of the recommendations in the 1994 report, *Equal in Dignity and Rights*, urges the provincial government to increase spending to boost the Commission's current staff so that the Commission can eliminate the two-year backlog of complaints. This has been attempted by seconding staff from various unrelated departments.

It appears investigators do not have the special training on how to deal with the emotions of sexual harassment victims/survivors. They also

I couldn't even talk about it at that time without becoming upset and crying. My boyfriend came with me to my doctor's office and they both told me I had to decide what's more important: this case or your baby?

I dropped the case.

should be aware of and make referrals to community resources which may be able to assist the complainant. As one complainant said: "I didn't realize there were other organizations out there to help. I had no idea. And Human Rights didn't tell me. If I had someone to talk to and someone to go through it all with, I think I probably would've stopped [the formal complaint] because I would've been able to talk out the stress and the things that were bothering me."

Another problem faced by sexual harassment victims/survivors is that both Commissions have time limits for laying complaints. The Canadian Human Rights Commission is more flexible and allows complainants one year from the time of the last incident. The regional director of the CHRC has said that the one year time limit is a guideline; in exceptional circumstances the time limit may be waived. The Alberta Human Rights Commission's time limit for laying a complaint is six months, and it is not flexible. These time limits pose problems for sexual harassment victims. Some victims/survivors may not be ready emotionally and/or physically to file complaints within six to twelve months. The initial reaction for many women is to deny that what is happening is sexual harassment. When they do recognize the behavior as sexual harassment, as many as 50 percent of women choose to leave their jobs. Many women believe that they can leave the problem, and the way it makes them feel about themselves, at the place the harassment occurred. It may be months, even years, before victims/survivors realize that they must seek some form of help to overcome the effects of the sexual harassment.

All of the women who have called our hotline and attempted to lay complaints with the AHRC see a need to increase the number of staff at the Commission. Many women have complained of unreasonable delays and difficulties in reaching their case workers. Constant underfunding and understaffing has led to unnecessary confusion, frustration and stress for Commission employees and for the complainants. Unfortunately, the government's response has not addressed the review's recommendations. In fact, the Conservatives have proposed that the Alberta Human Rights Commission be merged with the multiculturalism commission and the Advisory Council on Women's Issues. A move like this could make the Alberta Human Rights Commission a totally ineffective body, incapable of dealing with the growing number of complaints. Instead of strengthening the Commission, as the review recommends, the government seems to be working towards phasing it out. Even Jack O'Neill, former Chief Commissioner of the AHRC responsible for the public review, wondered aloud at a conference in November, 1994 if the government review was a charade. He found particularly disturbing information that the merger plan was in the making in February, just when he began public hearings at the government's request. (*Are They in Jeopardy*", 1994, p. HR4).

A former executive director of the AHRC has described the inadequacies of the AHRC as a body that started out being something that was to protect individual's rights in society and has turned into something that makes this mandate impossible to fulfill. She asks: "Is the commission independent? Can it really be independent from the government mandate the way it's structured right now? If it is independent, it must truly advocate and it must have the will to fulfill the legislation, and that is to represent the individual." As long as the AHRC remains under the jurisdiction of one government minister and merged with the advisory bodies, then it will never really be independent and impartial and able to pursue its stated agenda.

Unions

Another avenue of addressing sexual harassment is through one's union. However, the majority of working women are not protected by unions. Unions may offer many forms of protection that human rights commissions and workers' compensation boards do not offer. Unions exist to negotiate better working conditions for their members than those minimum conditions found in legislation. Many unions have anti-harassment policies outlining appropriate and inappropriate behavior in the workplace. Having a policy may deter harassers if they are aware of its existence and the negative consequences which may ensue if they choose to harass a co-worker or employee. Stated policies also make it easier for the victim to identify the offensive behavior as sexual harassment. A significant aspect of a policy is that it sets out a procedure for filing a grievance against the employer for not preventing or resolving the problem, instead of leaving it to the woman to find a personal solution.

Some progressive unions have established a sexual harassment committee and are encouraging women to participate in union affairs and in utilizing the grievance procedures. However, anti-harassment clauses are only effective if they are carefully spelled out in a collective agreement. According to a representative with one Alberta union, harassment is not clearly addressed in their collective agreement.

Although unions offer their members many forms of protection not available to non-unionized workers, problems may arise when both the griever and the harasser are union members. On the one hand, unions must provide the griever with representation when there is a clause in the collective agreements against sexual and personal harassment. On the other hand, since the harasser is also a union member, he is also entitled to representation against possible false claims of harassment. If the harasser is a fellow union member, a woman may be able to file a complaint within

her union if the union constitution covers this. If the perpetrator is disciplined or dismissed by the employer, he may grieve through the union. A union may have an alternative to not represent the perpetrator if they agree that the employer had just cause for disciplinary action, although the union may be subject to a lawsuit for "failure to represent" the member. In addition, the union may grieve on behalf of the perpetrator based on the severity of the punishment, while agreeing that sexual harassment occurred.

A City of Edmonton complainant said that, although she and the harasser were both interviewed, she did not feel that the grievance procedure offered by her collective agreement was adequate. At the initial meeting, the complainant felt that because the harasser was a "bigger man and he could talk louder and there was his union representative with him [that the interview was not fair]." She did not have her union representative with her: she went alone to all the meetings. At subsequent meetings she was very upset because her equal opportunity officer's supervisor said that they, [her employers], were not even sure if she was telling the truth.

How a complaint is handled is heavily dependent on the commitment and effectiveness of the union representative. Many unionized women who have complained of sexual harassment have said that the competence of their union representative has made or broken their case. As with other formal complaint processes, some unions do not provide adequate training to their investigators for dealing with sexual harassment complaints. Union representatives also may be burdened with heavy caseloads which make them ineffective in dealing adequately with each complaint. Another critical factor in the effectiveness of unions in dealing with sexual harassment is the low level of female representation in many unions. The gender imbalance reduces the opportunities for bringing the issue up in union-management negotiations. "The effectiveness of the union's role in dealing with sexual harassment ... depend[s], in the long run, on more women participating in the union governance." (Jain and Andiappan, 1986, p. 773) These issues impede the effectiveness of having a sexual harassment policy in the workplace. Unions must provide substantial support systems to their union representatives if they intend to uphold the rights of their members. All members and union staff, as well as the employer, must take the sexual harassment policy seriously.

Courts

There are two different avenues available in the court system. A victim/survivor may pursue a criminal case only if the harasser has violated

The effectiveness of the union's role in dealing with sexual harassment ... depends, in the long run, on more women participating in the union governance.

the **Criminal Code**. There is no criminal charge of sexual harassment, but some actions which constitute sexual harassment may violate the criminal code. For example, if the victim/survivor has been physically or sexually assaulted, if she is being harassed over the telephone or extorted the police may lay charges, or she may "lay an information" at the police station.

It is more common for victims/survivors to seek damages in civil court by suing the harasser. In a civil case, the victim/survivor may seek monetary damages from the harasser(s) as well as from her employer.

Actions can be brought in different courts. The Small Claims Court in the Provincial Court is for claims up to \$4,000. Claims for amounts greater than that go to the Court of Queen's Bench. The advantage of Small Claims Court (assuming, of course, that the damages are within \$4,000) is that an individual can bring a case on her own. The Small Claims Court has booklets to explain the process.

It is important to remember that there are time limits for bringing civil actions in court. A claim for damages resulting from personal injury (including psychological injury or mental distress) must be brought within two years of the events causing the injury. Claims for wrongful dismissal or constructive dismissal must be brought within six years (since the claim is basically for breach of contract).

Possible claims are for assault, psychological injury, mental distress, intentional infliction of nervous shock, or negligence.

Although there is no civil claim available in the courts for breach of a human rights statute, or for discrimination or sexual harassment as such (the Supreme Court of Canada having decided that there is no tort of discrimination), there are several categories of claim which can be brought in sexual harassment circumstances. One area is that of tort law. These are claims for injury done to a person. Possible claims are for assault, intentional infliction of nervous shock, or for negligence. The claims can be brought against the harasser(s) and the employer.

There have been some important recent decisions in Alberta involving claims for intentional infliction of nervous shock. In a 1992 decision (*Boothman v. R.*), the court found the Crown (as employer) liable for the actions of a supervisor. The court found that throughout the course of her employment, Ms. Boothman had been insulted, humiliated and harassed by the supervisor. He had threatened her with physical violence. He insisted on controlling her every action. The court held that the supervisor had intended to cause harm, and had succeeded. The damage resulting from his actions included depression and anxiety attacks. The court held that the supervisor had committed the torts of assault and intentional infliction of nervous shock. In so doing, he was acting in the course of his employment, and the Crown was liable. There may also be a possible

claim for wrongful dismissal or constructive dismissal. It is an implied term of every individual employment contract that the employer will maintain a safe work environment for employees. A poisoned work environment resulting from harassment by supervisors or co-workers may make it intolerable for an individual to keep working at that workplace. In such circumstances, the victim/survivor may be able to succeed in a claim that she was constructively dismissed. Each case, of course, depends on its facts. In a recent court decision from Newfoundland, a woman won a constructive dismissal claim against her former employer because she was subjected to abusive treatment by her co-workers (*Sheppard v. Sobey's Stores*). This particular decision has been described as unique in Canadian law, where constructive dismissal due to abusive treatment has up to now been the fault of management rather than co-workers (*The Lawyers Weekly*, January 27, 1995, page 7).

There may also be an action for breach of fiduciary duty. A fiduciary is a person in a position of authority who has obligations to act in the best interests of the person under his/her control. In a 1995 British Columbia court decision (*Mustaji v. Tjin*), an employer was held to have breached a fiduciary duty toward a domestic worker. The plaintiff had been employed by the defendant as a nanny in Indonesia and Singapore. She agreed to continue her employment in Canada. The plaintiff claimed that she worked seven days a week for two years, but had not been paid according to the contract. She claimed she had been denied the use of the telephone, the freedom to go out on her own, the opportunity to invite friends home, and she generally lived in fear of losing her employment. The court found that the employer was in a fiduciary position, and had breached such duty, in addition to breaching the contract. The court made an award for breach of contract and for punitive damages.

As with other formal complaint procedures, there are advantages and disadvantages in taking court action. If the civil court makes a decision in favour of the victim/survivor or the prosecution, then she may feel a sense of justice and she may also receive a monetary settlement. Monetary damages awarded by the courts are usually much greater than those awarded by the human rights commissions. Many civil cases are settled out of court. If the harasser is convicted in criminal proceedings, he will have a criminal record. In addition, there are no costs involved in criminal cases. Victims/survivors must be prepared for publicity. Some compensation may be recovered through the Government of Alberta's Crimes Compensation Board. To be eligible, a person must suffer some direct personal injury as a result of a violent crime, such as assault. The board must receive a written claim within one year of the injury. The crime and injury must have occurred in Alberta and all details must have been reported to the police within a reasonable time after the incident. A victim/survivor of an assault may be able to recover lost salary or wages,

including potential loss of earnings, medical and dental expenses, costs for damaged clothing or eyeglasses, maintenance of children born as a result of rape, and transportation expenses and loss of earnings as a result of attendance at a board hearing. All claims must be directly related to the assault.

Depending on whether it is a civil or criminal case, different factors should be taken into consideration. For both cases, the victim/survivor must be prepared to lose. In civil cases the victim/survivor may be required to pay court costs. In criminal proceedings, the burden of proof is greater, beyond a reasonable doubt, and it is the Crown pressing charges. A victim/survivor in a criminal case becomes a witness for the Crown and may feel she has lost control over the case. There is also a preoccupation with the rights of the accused. In civil cases, a lawyer acts on behalf of the victim/survivor. The victim/survivor maintains more control in civil cases but lawyer and court fees may be very expensive. Although it is rare, a lawyer may agree to take on a sexual harassment case on contingency. Sexual harassment cases usually do not result in large awards; therefore, most lawyers do not find it financially feasible to try sexual harassment cases on contingency. Most victims/survivors of sexual harassment are not financially stable since many have either lost or been forced to quit their jobs. As part of a settlement, a plaintiff may be put in the position of having to sign a nondisclosure clause that forbids her from talking about the details of the case. Both civil and criminal cases usually take a long time to resolve.

In many sexual harassment cases, the only evidence available is the testimony of the victim/survivor and that of the harasser. The unpredictability of witness' testimonies has been a problem in sexual harassment cases. According to Professor Backhouse, "resolution of evidentiary matters will always be critical in sexual harassment cases since corroborative witnesses are rarely available." She explains:

... our legal system is imbued with deep-rooted fears about unfounded claims of sexual abuse. In most cases of sexual harassment it is to be expected that the complainant will be the sole witness for her side and the alleged sexual harasser will deny all of the allegations. As a result, the trier of fact will be hard pressed to determine which side to believe.

(C. Backhouse, "Bell v. The Flaming Steer Steak House: Canada's First Sexual Harassment Decision: (1981), 19 U.W.O.L. Rev. 141.)

"A general survey of sexual harassment cases in Canada reveals that most (almost all) of the cases were won or lost on the credibility of the

... almost all of the cases were won or lost on the credibility of the witnesses, particularly that of the complainants or respondents.

witnesses, particularly that of the complainant(s) or respondent(s), rather than on any other grounds." (Aggarwal, 2nd Edition, 1987, p. 140) Victims/survivors considering court action must be prepared to be cross examined. This can be a very emotionally draining experience. As with other formal complaint procedures, victims/survivors should examine the pros and cons of court action.

Workers' Compensation Board of Alberta

The **Workers' Compensation Act** of Alberta, like other compensation legislation, was developed because the system of injured workers suing employers for loss of income and the provision of medical aid was a costly and unreliable method of securing compensation. Prior to compensation legislation, workers hurt on the job could be disabled and financially destitute for the rest of their lives, unless they could afford to sue their employers for negligence and were successful. While providing compensation to workers, the **Act** eliminates the right of the employee to sue the employer. It is a no-fault insurance system funded by employers in which neither the employer nor the worker assumes blame. The settlements awarded by the Workers' Compensation Board of Alberta (WCB) are significantly lower than similar damages won through civil actions (where the injury was not work-related). Some industries are exempt from the **Act** and others may obtain coverage voluntarily. The **Act** covers personal injuries, death, personal property damage (such as eyeglasses and dentures) and occupational diseases.

Most claims resulting from a single traumatic event seem to be compensable. This is also the position taken by most other provincial workers' compensation boards and by similar bodies in the United States. Cumulative stress claims, however, have been accepted only when the victim felt that her life was at risk. Investigators look at the severity of the case and, if her co-workers were also harassed, they ask what made her more susceptible.

The stress to which sexually harassed women are subjected can be mentally and physically debilitating. In 1990, the WCB of Ontario Appeals' Hearing Officer granted compensation to a woman who "suffered personal injury (anxiety reaction) by accident in the context of disablement (sexual and racial harassment) arising out of and in the course of her employment." Although compensation boards were originally designed to deal with physical injuries, the Alberta board has also accepted claims of psychological impairment. The number of stress claims they receive are up to almost 400 per year, but 90 percent of them are denied. The case is dealt with individually and adjudicated on its own merit. In fact, a WCB representative told EWW that a "person has to really feel psychologically or

***... they say, Oh,
there's a hysterical
woman...***

***It's all about sexist
attitudes and who's
more credible. This
doctor in a white
coat, good old Dr. X,
he's a pillar of the
community, he's more
credible than you,
because who are you?***

physically threatened" in order to have a successful claim. WCB representatives have not made it clear how they determine whether or not a claimant feels threatened. Furthermore, in cases of cumulative job stress, the WCB believes that the worker always has the choice of quitting. The WCB acknowledges that this choice is not ideal, and that it sounds harsh, yet they offer no alternative means of addressing the claim through the WCB. Instead, they suggest that the complaint should be dealt with through the court or the human rights commissions.

As with all complaint processing procedures, there are issues of credibility. The WCB is not bound by the formalities of the courts and can take all forms of evidence. If there is a criminal conviction (that is, a finding beyond a reasonable doubt against the harasser), that will likely play an important part in the WCB's decision. They will also assess intangible evidence by looking at factors such as what the individual was like before the harassment. According to an experienced Alberta litigation lawyer, if WCB takes the claim, the civil courts will not allow the worker to sue. She also has noted that few stress claims have been accepted by the WCB. She further says that it is not clear if WCB covers sexual harassment stress claims in Alberta.

Informal Actions

The ineffectiveness of the formal actions outlined above has led many women to seek informal and creative means in preventing, confronting and stopping sexual harassment at work. Informal actions refer to actions that a victim/survivor can choose which do not involve filing a formal complaint. There are many advantages to choosing informal action in resolving sexual harassment at work. Formal action, such as filing a complaint with one of the human rights commissions, often takes a long time to resolve, can be physically and emotionally draining, and the results of the investigation can be very disappointing. Furthermore, the AHRC reported that the largest proportion of complaints came from employees of small employers since big employers are starting to realize that sexual harassment affects the bottom line: i.e., their productivity and profits. Small employers often are not unionized and there is much more pressure on workers to keep quiet and endure sexual harassment. These workers may benefit more by taking informal action since there are fewer protections available to them. There are many forms of informal action that can be taken and, in some situations, informal action may be more effective. Informal action usually results in much more personal satisfaction for victims/survivors.

Keeping a Work Diary

All employees should keep a record of hours worked, duties assigned, and significant workplace events and conversations, whether or not they intend to challenge problems that may surface. In cases of sexual harassment, writing about the events may help the victim/survivor work through the problem and release some tension. Documenting one's work history may be the only tangible evidence available if one is harassed and decides to take formal action, or if a co-worker names others as a witnesses in her complaint. When one approaches human rights commissions or other formal protection bodies, a written statement is required. Keeping a diary will make this part of the complaint process easier. The record should include the events/comments, the names of people involved (harasser, witnesses and other targets of abuse), and the dates and times that events occurred. A victim/survivor also should keep all copies of letters, including copies of any letters she sends to the harasser. Gathering proof that the victim/survivor is doing a good job is a safeguard against retaliation, especially if she decides to take formal action.

Being assertive by telling the harasser that his actions are objectionable and against the law is very important. The informal complaint may be verbal or in writing. Many victims/survivors find that writing a letter seems to have more impact. Furthermore, the victim/survivor will have a record of the objectionable behavior and she will have proof that she took some measures to stop the sexual harassment. Formal bodies, such as the Alberta Human Rights Commission and UIC, often ask complainants whether or not they have confronted the harasser. The letter will provide proof that she did.

Rather than ignoring the behavior, the literature on sexual harassment suggests a variety of informal responses. The victim/survivor may request a transfer, tell the harasser his behavior is not only unwanted, it is illegal; threaten to expose him at work, at home or to complaint processing body. The victim/survivor can also try to avoid socializing with the harasser and she should avoid discussing her personal life or listening to his personal problems. Asking for or accepting personal favours should also be avoided — he may expect her to return the favour. Some controversial options suggests that the victim/survivor "create a male protector" by talking to the harasser about his girlfriend or wife and family. She may even try to befriend "his woman".

In the past, Edmonton Working Women has found that creative, informal actions work very well against sexual harassment. Edmonton Working Women encourages women to form alliances with sympathetic women at work and attempt group action. If this is not possible, she can join a support group. One woman gave copies of all the vulgar jokes and

cartoons to her harasser's wife at the staff Christmas party. Also, pamphlets from human rights commissions, unions, companies and women's groups and organizations have been mailed anonymously to harassers. On another occasion, a group of women got support from two women's groups to picket an owner of a business at his place of work. Many women find that formal remedies to sexual harassment are inadequate and the costs involved too high.

Leaving Work

After carefully weighing their options, many victims/survivors choose to leave work. Surveys indicate that the majority of women choose to leave work instead of filing a complaint. The costs of filing a complaint may be very high and there are no assurances as to the outcome. Furthermore, some women must leave work due to related health problems. If the employer has a benefit plan, these women may be eligible for short term or long term disability. If sexual harassment is causing the victim/survivor to be ill, she should contact her physician and investigate her benefit plan. If the victim/survivor has no disability coverage and qualifies for unemployment insurance (UI), she can approach UI for the requirements for special benefits (i.e. sickness benefits). If the woman is willing and able to work, she can apply for regular UI benefits.

Obstacles remain for women who quit their jobs. Although, according to Employment Canada, if a woman leaves her job because she is sexually harassed, she will still qualify for unemployment insurance, many women find that they must provide proof. As stated earlier, providing evidence of sexual harassment is very difficult. In order to receive unemployment insurance benefits, one must prove that she had "just cause" for quitting. Although sexual harassment is just cause, the victim/survivor has to show that she tried everything in her power to change the situation, for example, by confronting the harasser. The victim/survivor needs to show that she had no choice but to quit because the situation was unbearable. If the UI agent agrees that a woman had "just cause" the employer is notified that the UI claim has been allowed. The employer is then given a chance to appeal the decision. Edmonton Working Women has found that some employers will appeal a UI claim if the claimant cites sexual harassment as her reason for quitting.

So far, Alberta Family and Social Services has not demanded proof of sexual harassment or evidence that the victim/survivor did all she could to avoid quitting her job. A woman who has been sexually harassed may still be entitled to benefits even if she quits her job due to sexual harassment. Regardless of this fact, Supports for Independence (i.e., welfare) rates are below subsistence levels.

Some other costs of leaving work may be that the employer may not provide a good job reference. In some circumstances, a victim/survivor may be "blacklisted", that is, she may not be able to find work in her chosen occupation.

While formal options can be lengthy, draining and disappointing, victims/survivors should carefully consider the positive and negative repercussions of informal options as well. However, women do report great satisfaction with well thought out creative solutions.

8 Effective Sexual Harassment Policies

The best way to combat sexual harassment is through education and prevention. Effective sexual harassment policies are needed to send a message to all employees and supervisors that sexual harassment is not tolerated in the workplace. Some harassers simply do not know that what they are doing is unacceptable, inappropriate and illegal. Employers should conduct regular safety audits of their workplaces which include ensuring work environments that are free of harassment. They should also present mandatory training and awareness programs on the issues of sexism, discrimination based on other prohibited grounds and preventing sexual harassment.

According to court and human rights tribunal decisions, an employer has a legal obligation, that is, an affirmative duty, to provide a working environment free from sexual harassment (*Robichaud v. The Queen*). All employers should have a clear and comprehensive written policy and procedures on sexual harassment. It is important to have a sexual harassment policy so that the employer protects itself from legal and financial liability, but Arjun Aggarwal repeatedly reminds us that firm policies denouncing sexual harassment restore and maintain human dignity in the workplace.

The employer should take the following steps:

1. Recognize and accept the fact that sexual harassment is likely to be occurring in the organization.
2. Develop a clear policy defining and prohibiting sexual harassment.
3. Establish an internal grievance system to handle complaints.
4. Communicate its policy to managers and employees alike.

(Aggarwal, 2nd Edition, 1992, p. 319)

I didn't want to intimate him.

I didn't want to make him defensive.

I didn't want to start a war...

The issue is that I had not been treated fairly.

The policy should cover any sexual harassment related to the work environment. This includes sexual harassment at work, during work related activities outside the usual place of work, at training sessions or workshops or at work related social activities, during travel to places of work and over the telephone.

There must be an independent person to whom the victim/survivor can complain without fear of losing her job. An external employee assistance provider may be appropriate to play this role. As well, employee assistance programs (EAP) should provide confidential counselling to victims/survivors of sexual harassment. A different counsellor with the EAP firm should be assigned to the harasser if he is asked to seek counselling. His sessions with the EAP counsellor are part of disciplinary action taken by the employer.

Employers can contact the appropriate human rights commissions or other individual, groups, agencies or companies knowledgeable about sexual harassment issues for assistance in developing and writing policies and procedures and effective ways of communicating them to all employees.

The ultimate test of effectiveness is that sexual harassment policies and procedures work. Employers must be willing to review these and make appropriate changes.

Complaint processors in companies and corporations represent both the harasser and the victim/survivor since both are usually employees. One investigator shared some disturbing information with Edmonton Working Women. He commented that in one case of sexual harassment, he has known the accused for years and he has a hard time believing that the alleged harasser would "do something like that". Before the investigation has even really started, the credibility of the complainant is under scrutiny. In a situation where there is a personal or close relationship between the harasser and the investigator it is doubtful that an objective and fair investigation will take place. Unfortunately, there may be no one else in the organization who can assist the victim/survivor with a complaint. In a situation like this one or when the employer is the harasser the victim/survivor may be reluctant to pursue a complaint or she may choose to complain to the appropriate human rights commission.

Writing the document is only the first step in establishing a policy. It is not enough to say that sexual harassment is against the law, there must be clear procedures in place for victims/survivors to follow. The policy must also be communicated to all workers. If an employee contravenes the

... he has known the accused for years and has a hard time believing that he would "do something like that".

sexual harassment policy, disciplinary procedures should lead to these progressively harsher steps towards the harasser:

- issue a warning
- insist on counselling
- transfer
- withhold promotion or work assignment
- lower performance rating
- put on probation
- dismissal.

Edmonton Working Women's outline for an effective sexual harassment policy takes the following approach:

1. The survivor and/or employees and the employer must agree on a definition of sexual harassment and a complaint procedure, which includes remedies for retaliation or recurrence of harassment.
2. It is the harasser's behavior which should be restricted:
 - (a.) If the nature of the work does not require communication between the survivor and the harasser, he may be restricted from talking to her.
 - (b.) If necessary, the harasser's worksite should be moved away from the survivor's. Her worksite should remain the same unless she requests that it be relocated.
3. The survivor should be protected against constructive dismissal:
 - (a.) A letter should be put on the survivor's file stating that her work was satisfactory.
 - (b.) A letter of apology should be filed, if requested by the survivor.
4. The survivor should be compensated:
 - (a.) A letter of warning should be put on the harasser's file.
 - (b.) A financial settlement should be paid by the harasser/ employer to cover the survivor's costs resulting from the harassment: fees (medical, psychological, legal), lost wages and stress.

9 Recommendations

As a result of Edmonton Working Women's experiences on the hotline and through our interviews with complaint processors and complainants, we have become aware of the deficiencies in Alberta's **Individual Rights Protection Act** and its administration by the Alberta Human Rights Commission. We have also noted problems in the way that employers, unions, courts and the Workers' Compensation Board of Alberta have handled complaints. While most of our recommendations are related to sexual harassment, others are motivated by our belief in the protection of human rights. After careful review of the various complaint procedures available to victims/survivors of sexual harassment, Edmonton Working Women has formulated the following recommendations:

1. All complaint processors/investigators of sexual harassment should receive specific training on how to deal with the emotions of victims/survivors of sexual harassment.
2. Complainants and defendants should be provided with legal counsel or advocates to act in their best interests.
3. Different HRC staff should conduct each phase of the complaint process: investigation, possible mediation and adjudication of complaints.

Current roles of Commission officers conflict — they have to be investigator, mediator, advocate and arbitrator all at the same time. Some complainants have practically had to conduct their own investigations when overburdened and/or biased HRC staff neglected to contact witnesses. Many sexually harassed women simply want the harassment to stop and to have their "day in court" to hear all evidence relating to their cases. The HRC complaint process concentrates on mediating settlements and avoiding going to Boards of Inquiry, despite the power provided by the legislation to hold Boards of Inquiry. This focus on mediation serves to keep the violation of human rights quiet and out of the public eye, leaving the complainant feeling disillusioned and silenced. Complainants are not even allowed to see the respondents' written responses to their complaints. This adds to the complainants' feelings of re-victimization and loss of control over the process.

4. The **Individual Rights Protection Act** should be expanded to include general harassment which is not specific to any of the existing grounds already covered. This is also known as verbal/emotional abuse in the workplace.

5. The **Individual Rights Protection Act** must include gender-based discrimination, such as gender-related remarks/putdowns which are not of a sexual nature.
6. Human Rights Commissions require adequate human and financial resources to deal with the present backlog of complaints.
7. The time limit for filing a complaint with the Human Rights Commission should be longer and more flexible, to accommodate the special circumstances of victims/survivors of sexual harassment.
8. Human Rights Commission staff should be allowed to initiate complaints, especially where records indicate a history of violations but victims do not want to come forward. Proactive investigations should be undertaken by the Commissions when random worksite inspections reveal violations of the legislation.
9. Legislation should explicitly state that retaliation regarding a complaint of sexual harassment will be treated as an additional sexual harassment complaint or a repeat of the original discrimination. There should be stronger consequences for such retaliation.
10. The complainant's word must be treated as evidence, as is that of the respondent. Commission investigators should use the full power of the legislation to gather evidence and then decide if complaints have merit.
11. In cases where circumstances of the complaint also fall under the jurisdiction of other boards, such as: the Employment Standards Branches, the Labour Relations Boards, Occupational Health and Safety departments, WCBs, etc., the Commissions should initiate cooperation with those departments to ensure improved work environments for all workers, not just the ones who risk their jobs by coming forward.
12. The Commission's role should be to protect human rights, not only through resolution of complaints but also by conducting broad public education. If one's rights are violated, the HRC should work with other government bodies to eliminate the poisonous work environment in which the violation occurred.
13. To ensure that the complainant returns to a safe and healthy work environment, follow-up visits must be conducted by the HRC periodically following the settlement of a complaint. In workplaces

where violations have occurred, as well as at random worksites, surprise inspections should be routine and complaints initiated by AHRC staff if necessary.

14. Ordering the implementation of a sexual harassment policy often provides only the illusion of correcting sexist attitudes and hostile work environments. For the woman returning to the worksite, stronger measures must be ordered to ensure her well-being.
15. Unless both parties agree to a non-disclosure clause (not while under duress), then decisions of the HRC and settlements concluded through the HRC should be made public, and used proactively to encourage the public to adopt non-discriminatory attitudes.
16. HRC settlements should match or exceed precedents set in civil courts and human rights tribunals across North America so that awards for damages are appropriate for the damage done. This may also serve to be more of a deterrent for repeat offenders, as well as a general deterrent. Exposure when settlements are made public can also act as an effective deterrent.

Compensation to victims should include: lost wages, benefits and opportunity; mental distress and emotional suffering; legal, medical and psychological fees resulting from mistreatment; removal of complaint-related documents from the complainant's personnel and personal files; letter of reference and/or apology from the offender/ employer; reinstatement in the same or a similar job (if so desired by the complainant); transfer of offender from original worksite to another location (if possible); transfer of complainant to another worksite (if so desired by complainant). Immediate action should be taken that creates a safe workplace and deals with the offender, and not simply providing mental distress damages and a psychiatrist to the complainant.

17. More sexual harassment complaints should be referred to the HRC's Board of Inquiry. To date fewer than one percent have been referred.
18. The HRC should remain an independent body, separate from the Alberta Council on Women's Issues and the multicultural commission.
19. Alberta's labour legislation requires some changes: for example, employment equity legislation. Changes are needed to ensure that women are equal partners in the workplace. Employment equity legislation creates a solid foundation in reaching equality in the workplace.

20. Self-policing professional associations should develop adequate sexual harassment policies and procedures and communicate them to their members and to the public.
21. The Workers' Compensation Board of Alberta should recognize sexual harassment as a work-related stress injury and compensate victims/survivors. An effective policy on sexual harassment is necessary.
22. Unions should negotiate with employers for:
 - (a.) anti-harassment training sessions which are company paid and during working hours
 - (b.) women's right to refuse to work in violent or harassment-ridden situation
 - (c.) no discipline against employees who are away from work because they are dealing with violent situation at the workplace
 - (d.) employer paid childcare contributions.
23. All formal protection bodies should become more "user-friendly". Complainants should be clearly informed, both verbally and in writing, of the complaint process and the time needed to complete it. All verbal and written communication should be in easy to read English. If English is the complainant's second language, independent interpreters experienced in English as a second language should be used to ensure clear understanding.
24. All employers should establish effective sexual harassment policies and procedures, and post them for the benefit of all staff.

10 Summary

Sexual harassment is a societal problem. It affects everyone. Emotionally and psychologically, victims/survivors suffer embarrassment and fear and others suffer economically from reduced productivity and increased stress in the workplace. Western society tends to focus on the rights of the individual as opposed to the rights of the collective. As a result, when workplace problems arise which appear to be private in nature, such as sexual harassment, the focus tends to be on the appropriate or inappropriate actions of the individuals involved. Sexual harassment is erroneously seen as a private problem to be solved between the harasser and the victim/survivor. We must acknowledge that the workplace itself may be poisonous and unhealthy: that is, the workplace may be conducive to sexual harassment. If we continue to look at sexual harassment as a

problem between individuals, the situation will never get any better. We must acknowledge that sexual harassment affects all employees, employers and their friends and families. The effects of sexual harassment do not stop once work hours are over. Victims cannot always leave their anxiety and fear at the door when they come home.

Women continue to enter the paid workforce in greater numbers than ever before and this trend will continue. According to some social theorists, as the traditional family changes and as more women enter the workforce, the workplace is assuming more of the functions of the family. The difficulties and challenges we face at home are becoming issues at the worksite. Men and women continue to struggle with changing sex roles at home and at work. We are still socialized to think and act in certain ways according to our gender. Mothers continue to assume most responsibility for household tasks and childrearing even when in a two-income family. Fathers are not usually the primary caregivers in child custody arrangements. Old habits are hard to break, but change is coming. Taking parental leave, doing contract work at home, caring for sick kids on company time are all becoming commonplace.

Edmonton Working Women believes that all people have a right to participate fully in private and public life. Personal attitudes can be slow to change and never legislated. Offensive behavior, on the other hand, can be deterred through effective legislation and enforcement agents that have the power to fulfill the intent of those laws. Crucial to this progress are governments with the political will to adequately fund and strengthen our existing human rights legislation and its administration. Otherwise, it will be merely words.

11 References

- Aggarwal, A. (1992). *Sexual Harassment in the Workplace*, 2nd Edition, Toronto: Butterworths.
- Alberta Human Rights Review Panel, *Equal in Dignity*, 1994. Edmonton: Government of Alberta.
- Alberta Attorney General. *Crimes Compensation*. Edmonton.
- "Are They in Jeopardy?" (1994, December). *Labour News*. Edmonton: Alberta Federation of Labour, p. HR4.
- Bisset, S. (1992). "Developing and Implementing a Sexual Harassment Policy - the Key Elements" in *Workplace Sexual Harassment*. Toronto: The Law Society of Upper Canada.
- Backhouse, C. and L. Cohen. (1978). *The Secret Oppression: Sexual Harassment of Working Women*. Toronto: MacMillan.
- Backhouse, C. "Bell v. The Flaming Steer Steak House: Canada's First Sexual Harassment Decision: (1981), 19 U.W.O.L. Rev. 141.
- Canadian Advisory Council on the Status of Women. (1994). *110 Canadian Statistics on Work and Family*. Ottawa: Author.
- Canadian Advisory Council on the Status of Women. (1993). *Sexual Harassment: CACSW Fact Sheet*. Ottawa: Author.
- Canadian Human Rights Commission. (1983). *Unwanted Sexual Attention and Sexual Harassment: Results of a Survey of Canadians*. Ottawa: Minister of Supply and Services Canada.
- Edmonton Working Women. (1989). *Women: Know Your Rights! A Handbook for Women in the Alberta Workforce*. (2nd ed.). Edmonton: Author.
- Falardeau-Ramsay, M. (1994). "When 'No' Isn't Enough: Sexual Harassment and the Canadian Human Rights Act." *From Awareness to Action: Strategies to Stop Sexual Harassment in the Workplace*. Ottawa: Minister of Supply and Services Canada.
- Jain, H. C., & Andiappan, P. (1986). "Sexual Harassment in Employment in Canada: Issues and Policies." *Relations Industrielles*, 41, (4), 758-777.

Janzen v. Platy Enterprises Ltd. [1989] 1 S.C.R. 1252.

Ontario Women's Directorate. (1993) *Employer's Guide: A Time for Action on Sexual Harassment in the Workplace*. Toronto: Author.

Page, J. S. and Springer, S. L. (1992). "Managing Sexual Harassment in the Law Firm: Policy and Practice." in *Workplace Sexual Harassment*. Toronto: The Law Society of Upper Canada.

Sandroff, R. (1988, December). "Sexual Harassment in the Fortune 500." *Working Woman*, pp. 69-73.

Sandroff, R. (1992, June). "Sexual Harassment: The Inside Story." *Working Woman*, pp. 47-51.

Wolpert, M. & Sweatman, S. (1993, September/October). "Sexual Harassment: What Employers Should Do To Stop It" *Benefits and Pensions Monitor*, pp. 35-37.

Wolpert, M. & Sweatman, S. (1993, November/December). "Sexual Harassment: How Employers Should Deal With a Complaint" *Benefits and Pensions Monitor*, pp. 9-10,40.

Yogis, J. A. Q.C. (1983). *Canadian Law Dictionary*. Toronto: Barron's Educational Series Inc.