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SEXUAL HARASSMENT IN HIGHER EDUCATION

By

Michele Medlicott

B.G.S., Simon Fraser University, 1990.

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF ARTS  
IN THE DEPARTMENT  
OF  
EDUCATION

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## ABSTRACT

The topic of sexual harassment in academe is approached from two distinct perspectives, a historical perspective that demonstrates that the issue of sexual harassment although identified in contemporary times has existed since societies became organized as patriarchies; and a perspective of lived experience of those who currently work with sexual harassment victims in academe. The history of women's struggle for equality is outlined, followed by an analysis of how colleges and universities deal with sexual harassment. These perspectives combine to portray a picture of systemic discrimination faced by women historically and in contemporary academe.

The history of women starts over six thousand years ago when most of central Europe consisted of peaceful communities where women had equal rights with men and participated fully in public life. Tribes governed by warrior kings at that time were clustered in Northern Europe. In this culture women were regarded as inferior to men and were treated as commodities. By 2000 B.C. the warriors had slaughtered most of the peaceful tribes and women's subordinate position became the norm in Europe. The thesis explains how the warrior society has maintained the subordination of women throughout the last millennium and

how present day organizational structures reflect patriarchal values.

Women's struggle for legal rights in Canada is then outlined and the evolution of sexual harassment case law detailed. The development of sexual harassment as a legal issue is discussed including the implications of case law for college and university students in British Columbia.

The merit of a special focus on higher education is explained. It is followed by the results of a survey of how British Columbian colleges and universities respond to complaints of sexual harassment on their campuses and what measures the institutions are taking to prevent sexual harassment.

The thesis concludes with recommendations aimed at changing institutional structures that perpetuate discrimination against women and at strengthening efforts to prevent sexual harassment in higher education.

# SEXUAL HARASSMENT IN HIGHER EDUCATION

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## CHAPTER 1

### INTRODUCTION TO THE THESIS

#### The Relevance of the Topic of Sexual Harassment

More Canadian women today attend universities and participate in the workforce than ever before in history, but there is evidence that women have a considerable distance to go before they will have educational and employment equity with men. For example, the United Nations Development Report, of April 1992, proclaims Canada as "the best place in the world to live unless you are a woman". The report explains that Canadian women earn only 69.9 percent of what their male counterparts earn and men occupy the best jobs. In 1990, only 4.7 of 7000 directors of Canadian corporations were women. The 1992 Canadian Human Rights Annual Report (p.46) speculates that the reason women are persistently underrepresented in a number of traditionally male fields is largely because women are made to feel unwelcome in male dominated professional or trades schools. The results of a 1991 Canadian Committee on Women in Engineering study, for example, indicates that only four percent of registered engineers and only fifteen percent of engineering students in Canada are female. The study found

that the low number of women in this field was directly attributable to the blatantly sexist attitudes among male students which deterred women from entering the faculty to begin with and "chilly campus climate" which discouraged women from continuing studies in this faculty (Canadian Human Rights Annual Report, 1992 pp. 46-47).

This thesis focuses on one form of sex discrimination faced by significant numbers of women in higher education and the workforce that frequently prevents them from completing their education or moving ahead in their chosen profession. This problem has always existed for working women, but only in the mid 1970s was it identified and named "sexual harassment".

"Sexual harassment" is harassing behavior that focuses on the victim's sexuality. It is usually directed at a woman by a man in a bid to exert control and power over her or to manipulate, intimidate or undermine her in her work or studies. It is estimated that more than thirty percent of women in both educational and workplace environments experience sexual harassment, a statistic that has remained constant since the mid 1980s in spite of the fact that offenders are increasingly ending up the losers in sexual harassment litigation cases in both Canada and the United States. In recent years, American companies have been

directed to pay substantial financial settlements to victims, since the civil rights laws in the U.S. were strengthened in 1991 to allow sexual harassment victims to sue for compensatory and punitive damages.

Sexual harassment as a legal issue emerged in 1974 in the United States and in 1980 in Canada; the literature started in the mid 1970s as several universities in the United States initiated research studies into its incidence and frequency and published the results. At the same time, the women's movement was successful in publicizing the issue through sympathetic treatment by the media. Sexual harassment is still a developing field of study and even in the 1990s the literature is relatively small compared to other areas of women's studies.

#### The Sexual Harassment Literature

Research conducted to date on sexual harassment has been approached from three main perspectives and disciplines; sociology, psychology and law. Sociological studies have focused primarily on the statistical frequency of sexual harassment incidents in both academic and workplace contexts. Psychological studies have researched the perceptual differences between men and women of sexually

aggressive behaviors, the physical and emotional effects of sexual harassment on men and women and strategies used by both genders to cope with sexual harassment and attempts to stop it. Most of the psycho-social research has relied largely on quantitative methodology. Legal research, on the other hand has used legal conceptual methods in presenting philosophical arguments on how the law should regard the sexual harassment issue.

In the last three years, however, the scope of the sexual harassment literature has broadened considerably in terms of the range of topics, the perspectives, the fields of study and to some degree the methods used. For example, since 1990, the field of business administration has suddenly become a major contributor to the literature. Six new books and a large number of journal articles on sexual harassment have appeared in the last three years, written for administrators and business readers. This sudden interest in the topic by business is likely attributable to its fears of expensive legal settlement costs as a result of the legislation mentioned above. The sexual harassment literature is outlined and discussed in detail in the following chapter.

## What This Thesis Contributes to the Literature

This thesis approaches the topic from a perspective not previously attempted. Sexual harassment has been studied through the disciplines of sociology, psychology, law and business. The topic has not yet been examined in a comprehensive way from a feminist historical perspective and that is what this thesis purports to do. As well as considering sexual harassment in a historical context, the thesis also reports the results of a qualitative research study in which those who work with sexual harassment victims are interviewed. This is also a new research focus.

Several authors, (Farley, 1978, Backhouse 1978, 1991, Read 1982, Miles 1983) include some history in their analysis, but history is not a major focus of their works on sexual harassment. There is also a small but significant body of literature on the history of women, but the link between the historic oppression of women and the sexual harassment of women in academe is only alluded to and the connection is not strongly made.

As Code (1988) explains, we can only understand and deal with the present if we know our past history. It is essential that we understand how the power differential between men and women came into being, she says. Only by understanding how it came into being and how it has been

maintained, can we identify ways to end the oppression of women today.

This thesis provides the connection between the oppression of women throughout history and sexual harassment of women today. It also gives historic evidence that sexual harassment is not a gender neutral issue, it is clearly a women's issue, in spite of the fact that the law treats sexual harassment in a gender neutral fashion as does some of the literature on sexual harassment. While incidents of sexual harassment of men and women by women have occurred, they are statistically rare.

Also examined in the thesis is the way in which the Canadian government, the legal system, and British Columbian educational institutions deal with sexual harassment and possible reasons why sexual harassment has not been eliminated are proposed. Recommendations on ways to improve sexual harassment prevention methods in academe are suggested in the final chapter.

#### The Thesis Perspective and the Method

The thesis takes Code's suggestion that the origins of the power differential between men and women be examined first in order to put the contemporary issue of sexual harassment

into historical context. Women's status and societal roles throughout the history of western civilization are first outlined and considered. Conceptual frameworks that explain how the oppression of women was established and how it has been maintained are provided by the historians and then applied to the contemporary context of higher education organizations. The thesis also presents a detailed examination of how academic organizations in British Columbia deal with sexual aggression and harassment on their campuses.

This research does not, however, rely exclusively on the analysis and conclusions of feminist historians. After establishing the historical social and legal context of the contemporary issue of sexual harassment, the thesis then enters the field of lived research for a first hand look at the sexual harassment policies and procedures established at the colleges and universities of British Columbia. Sexual Harassment Policy Coordinators and campus advocates (union, student, women) from colleges and universities across the province are asked for their opinion of how well their educational institution is dealing with sexual harassment and what they think the institution could do to lessen the problem and improve the study and work environment for women on their campus. The ideas of the practitioners are



synthesized with the historians and the theorists to form new conclusions on possible strategies to prevent sexual harassment on campus.

The method used in the thesis is conceptual analysis, except for a section of Chapter 5 where interviews are conducted and qualitative research techniques are used to compile the results. A description of the interview agenda, the interview process and the compilation of the findings of this study is detailed in Chapter 5.

The conceptual analysis method used in this thesis has already been described but can be best summarized perhaps as a "macro" view of women in history followed by a "micro" view of women at colleges and universities in British Columbia. The framework for analysis of the sexual harassment problem today is borrowed from the historians featured in this thesis.

#### Limitations and Biases of the Thesis

In presenting an overview of history, which in this case spans over twenty thousand years, there is no doubt that there are likely omissions of events that may be significant to the history of women as well as some possible differing interpretations of the events. As history comprises only a

portion of this thesis and is used primarily as a conceptual tool for the analysis of the contemporary issue of sexual harassment, the historical accounts had to be summarized, edited and condensed. The purpose of the historical data is to present a global picture of how women have been treated through the millennia, so that periods of women's severe oppression and times of relative liberation can be highlighted and studied. I have chosen only feminist historians because women have been largely ignored by mainstream historians and are usually invisible in mainstream historical accounts. Perhaps not surprisingly, authors who have focused specifically on the history of women have a feminist bias, which I make no apologies for, nor do I make any effort to provide a non-feminist balance. As the non-feminist approach is to ignore women's role in history, it is obviously not possible to present an opposing point of view.

Sexual harassment has been labeled as a "non-issue created by man hating feminists" by those who oppose the concept on ideological grounds. This argument is not represented in this thesis as it can not be taken seriously given the evidence of how women have been harassed and oppressed on the basis of their sex throughout history. This evidence is presented throughout the thesis.

The thesis bias is admittedly feminist in that it advocates human rights for women and argues that women have the right to a higher education that is free from harassment and intimidation, but the thesis does not ally itself with any particular classification of feminist thought.

#### Guide to the Thesis

Chapter 2 is a literature review that also presents some of the main issues surrounding sexual harassment. The literature is considered in categories of; the early literature (1974-1983), sociological and psychological research studies, higher education literature and business literature.

This chapter does not, however, review all literature used in the thesis and much of the sexual harassment literature reviewed in this chapter is not used in the rest of the thesis. For example, the psycho-social research and most of the business literature are largely irrelevant to this inquiry but are included in the literature review in order to illustrate the dimensions of knowledge that exist on the topic. The higher education literature on the other hand is essential to this study and is used in Chapter 5. Most of the historical and legal works used in the thesis can not be classified as sexual harassment literature so are not

included in this chapter.

This chapter while reviewing the literature also introduces the topic, providing an explanation of the various meanings attributed to sexual harassment by the authors cited in the chapter as well as legal definitions of sexual harassment and criteria for establishing legal cases.

Chapter 3 provides a global picture of women in history by going back in time to when women had autonomy and participated fully in public life along with men. The chapter looks at how egalitarian partnership societies were overthrown by autocratic patriarchal societies and how all organizations in society were remodeled to mirror the hierarchical, patriarchal model. The chapter explains how present day patriarchal organizational structures, symbols and belief systems perpetuate sexism.

Chapter 4 traces the history of women's struggle for legal rights in Canada over the last two centuries and then details the evolution of sexual harassment case law over the past two decades. The development of sexual harassment as a legal issue is discussed including how the outcome of recent Supreme Court decisions affects college and university students in British Columbia.

Chapter 5 focuses on sexual harassment in the context of higher education and the chapter is broken into two parts.

The chapter first explains why the academic environment merits a specific focus in the study of sexual harassment. It then investigates how British Columbian colleges and universities respond to incidents of sexual harassment that occur on their campuses and what measures the institutions are taking to prevent sexual harassment. Those who work with sexual harassment victims are interviewed and their observations and concerns presented.

Chapter 6 concludes the thesis with recommendations aimed at strengthening sexual harassment prevention efforts in academic institutions and in the workplace.

## CHAPTER 2

### OVERVIEW OF THE LITERATURE ON SEXUAL HARASSMENT

This chapter provides an overview of the main issues surrounding sexual harassment through a review of the literature. The literature is considered in four major categories; early literature, research studies, sexual harassment in higher education and literature focused on helping victims and business managers deal with sexual harassment problems in the workplace. Although the chapter organizes the literature into these categories, in fact there is considerable overlap of the categories especially in some of the most recent books.

The early literature outlines what sexual harassment is and describes the genesis of the recognition of this issue in the 1970s. The findings of sociological and psychological workplace and campus research studies are identified and some of the recent "self-help" literature that is available to victims and business administrators is reviewed. Chapter 2 ends with a discussion of the literature that focuses on sexual harassment in a higher education context and explains why this context merits a special focus.

## THE EARLY LITERATURE ON SEXUAL HARASSMENT

While articles and studies on gender inequity in the workforce started to appear in both academic journals and popular magazines of the early 1970s, few focused directly on the issue of women workers being harassed in a sexual way by the men they worked with.

In 1974, Professor Lin Farley at Cornell University, faced with the prospect of teaching a course on women and work, found a curious lack of academic and analytical literature on the subject. So, without readings to work with, Farley turned the class into a "Consciousness Raising" group where she and her students shared their experiences of the work world. An experience common to all the women in her class emerged in discussion - all the women had been forced to leave their summer jobs due to unwanted sexual attention directed at them by colleagues and supervisors. The similar work experiences voiced by women of diverse backgrounds, led her to suspect that harassing behavior of a sexual nature was more prevalent in the workplace than was previously thought. Farley recruited a research team to study the issue further. At the same time Farley and two of her colleagues at Cornell University organized "Speak Outs" where women could talk about such issues as harassment,

abortion and rape in a supportive community environment. Farley reports that it took some courage to talk publicly about a problem that had never been acknowledged or named. She said she was frequently doubted but the issue struck a resonant chord with many women to whom she spoke.

A reporter from the New York Times is credited with introducing the concept of sexual harassment to North America in August 1975. New York Times reporter, Enid Nemy, wrote a story that documented the Cornell University sexual harassment research, entitled "Women Begin To Speak Out Against Sexual Harassment at Work", which became the first nationally syndicated article in North America on sexual harassment in the workplace (Brownmiller & Alexander, 1992, p. 70). This article sparked the interest of women's groups across the country and of the media and led to the development of research surveys at a number of universities across the United States (Farley, 1978).

In 1976, a popular women's magazine, Redbook, published a questionnaire on sexual harassment. Over 9000 women responded, nine out of ten respondents reporting to have experienced some form of unwanted sexual attention on the job. This Redbook poll was followed by articles on the subject by other news media, and, by the late seventies, the concept of sexual harassment began to take hold in the North



American consciousness. As women became able to name the male behavior troubling them, they began to take their cases to the American courts. The first victims bringing claims of sexual harassment to American courts in the mid 1970s lost their cases, but by the late 1970s in the United States and by 1980 in Canada, the courts began to accept the legal argument that sexual harassment in the workplace is a form of sex discrimination, and victims started to win their cases in court.

In 1978 two books on sexual harassment were published: one in Canada and the other in the United States. Constance Backhouse and Leah Cohen, Canadian authors of The Secret Oppression: Sexual Harassment of Working Women, approached the subject from a Canadian legal and historical perspective. Lin Farley documented the experiences of women in her Cornell University research studies while providing a feminist framework to analyze sexual harassment, in Sexual Shakedown: The Sexual Harassment of Women on the Job. Both books were written as guides for working women, to help them identify what sexual harassment is and why it exists, and to offer women advice and strategy on avenues of redress.

The following year American lawyer and legal scholar, Catherine A. MacKinnon published Sexual Harassment of Working Women. A Case of Sex Discrimination which provided a

legal, philosophical and academic dimension to the emerging literature on sexual harassment. Both Farley and MacKinnon became well known as sexual harassment experts in America, in the late 1970s due to their extensive sexual harassment research experience at Cornell and Yale universities. Farley publicized her views on sexual harassment across the country, as well as giving testimony at the 1975 Commission on Human Rights in New York, while MacKinnon joined forces with lobby groups that were fighting for women's legal rights. MacKinnon also made regular presentations of her work on sexual harassment to the Equal Opportunities Commission, a legal advisory agency in the United States (MacKinnon, 1979, in Eskenazi & Gallen, 1992, p. 54 and MacKinnon, 1987, p.103). There is no doubt that both Farley and MacKinnon's pioneering efforts on sexual harassment had considerable political and influential power in convincing the courts to take this issue seriously. After these books were published, other perspectives on sexual harassment appeared in the early 1980s.

In 1981, a book with a distinctly non-feminist analysis on sexual harassment, targeted to a corporate management audience, appeared in the literature. Meyer et al.'s Sexual Harassment suggested that men who sexually harass women are just confused by the changing norms of women's

roles in society and simply do not know how to interact appropriately with women at work. The authors also implied that women harass men to the same extent that men harass women so sexual harassment should not be viewed as a feminist issue. This interpretation was based on the findings of a limited study conducted by the authors. Meyer et al's research of the late 1970s is of questionable validity in light of the extensive research studies that followed in the next two decades; research that revealed that sexual harassers are almost always men who use sexual harassment as a weapon to intimidate and control, as well studies that showed differences between men and women in their experience of sexually harassing behaviors. No other studies since have suggested that sexual harassment is motivated primarily by lack of understanding about how to relate to the opposite sex. Research conducted throughout the 1980s and the early 1990s has consistently reported that statistically few men are sexually harassed compared to women and even fewer numbers of men ever quit a job or are fired due to being sexually harassed on the job. Some of these studies are discussed later in the chapter.

In 1982 and 1983 Sue Read and Rosalind Miles wrote the first British books on the subject of sexual harassment. The concept of sexual harassment was largely still unknown

in Europe in 1982-83, and the Equal Opportunities Commission of Great Britain had yet to receive an official complaint concerning sexual harassment. (Read, 1982, p. 150). While these two British books conveyed a message similar to Farley's, the cultural context of case studies described by the authors, brought the issue home to the women of Great Britain.

Significantly, the early books on sexual harassment were published as newsstand paperbacks, with provocative front covers, targeted to a popular audience. Early articles on sexual harassment were published in women's magazines and city newspapers. The authors of all the early books who themselves were academics are to be credited with choosing a popular format as it appeared to succeed in raising public consciousness of the issue quickly.

The early literature is important not only because of its consciousness raising effect on women of the nineteen seventies and early eighties, but also because it documents both the historical realities of the working environment and the societal attitudes about working women of that time. In some ways, the early literature can be utilized as a baseline to measure the extent to which gender equity has been achieved since the 1970s.

For example, Backhouse & Cohen and Farley quote surveys

taken between 1975 and 1977 that indicated that approximately 70 percent of female workers reported being sexually harassed and three quarters of those who were harassed took no action. By contrast, most of the studies conducted in both Canada and the United States in the nineteen nineties identify the frequency of sexual harassment in the workforce at a much lower level of between 30 to 40 percent. For example, a poll taken by Angus Reid-Southam News, in October 1991, reported that 37% of Canadian working women and 10% of Canadian working men suffer from sexual harassment. Of the young women polled, 44% reported being victimized. 59% of all respondents who claimed they had been harassed said they did not complain or take action against the harasser, because they thought their complaint would not be taken seriously and because they feared reprisals (Vancouver Sun, November 9, 1991, p. A3). While the overall percentage of those who experience harassment appears to be considerably less today, than in 1975, and could be considered to be progress for working women, it is significant that the majority of victims still lack confidence in the redress systems of the companies they work for and in their provincial human rights councils, and do not report sexual harassment incidents.

Faludi (1991) claims that women today are not better off

than they were in the 1970s. 80% of American working women are still ghettoized in the lowest paying jobs, 82% say they suffer from job discrimination and 94% of American women say they receive unequal pay, she states:

Government and private surveys are showing that women's already vast representation in the lowliest occupations is rising, their tiny presence in higher-paying trade and craft jobs stalled or backsliding, their miniscule representation in upper management post stagnant or falling, and their pay dropping in the very occupations where they have made the most 'progress'.  
(Faludi, 1991, p. 27).

As Faludi demonstrates, many of the issues identified by the early writers on sexual harassment are still current in the struggle for equal rights, but sexism is no longer expressed in the overt ways that it was in 1970s. For example, the authors of the early literature state that women in society are fundamentally defined as sex objects. ( Backhouse and Cohen, 1978, Farley, 1978 ). To support this claim, Farley cites a survey of 2000 American firms conducted by the National Office Management Association in the 1960s that revealed that almost 30% of the firms polled gave serious consideration to sex appeal of female applicants when hiring receptionists and secretaries. No company today would admit to screening candidates for sex appeal, unless sex was a bona fide requirement for the job (as in an escort service). Of course in practise, it is possible that company managers still hire the "sexiest" candidates for reception and

secretarial positions.

The statement by feminists of the 1970s, however, that women are fundamentally defined as sex objects in society would likely elicit denials from many young women of the 1990s. As Jordon (1992) suggests, many young women are scornful of women's issues because they believe they now have equal status in society.

A woman may float through her early years wondering what all the fuss is about... A 19 year old premed student says 'I get what I want, I do what I want. Who needs it (women's movement)'. Her icon-for-the-moment is Madonna, who wears a bullet bra, grabs her crotch and is perceived as laughing all the way to the bank.

(Jordon, 1992, p. 58).

Jordon states that the gains made by the women's movement since the 1960s should not be underestimated. More woman than ever before have access to education, jobs, and control over who they will marry and how many children they will have. In spite of growing evidence of a backlash against rights women have won, Jordon says she is encouraged that "Women are finding their voice and encouraging each other to report date rape, marital rape, and domestic violence - although the counterforces are considerable" ( Jordon, 1992, p. 57). Faludi would likely argue that women are going to have to muster a lot more energy and voice, in order to prevent a total erosion of workplace rights and reproductive rights won in the last half of this century.

## WHAT IS SEXUAL HARASSMENT ?

The term "sexual harassment" is used somewhat differently in the literature depending on the context. The literature that addresses the issue of workplace sexual harassment usually means "any repeated and unwanted sexual comments, looks, suggestions or physical contact that one finds objectionable or offensive and causes one discomfort on the job, or any sexually oriented practise that endangers one's job, undermines one's job performance and threatens one's economic livelihood " (Backhouse and Cohen, 1978, p. 38). This description of sexual harassment on the job was provided by women's groups of the mid nineteen seventies, and is remarkably similar to the description provided by the Canadian Human Rights Commission today. The Canadian Human Rights Commissions describes sexual harassment as "any unwanted physical contact, attentions, demands, a pattern of jokes or insults are harassment when they affect your job, your working environment, or your chances to obtain a service... If you are refused a job, a promotion, or a training opportunity because you won't put up with harassment, you have been discriminated against" (Canadian Human Rights Commission's Sexual Harassment Casebook, 1984. p.2).



A definition dealing with sexual harassment of students by professors was proposed by Till in 1980 and has been used in many university sexual harassment policies since; "the use of authority to emphasize the sexuality or sexual identity of a student in a manner which prevents or impairs the student's full enjoyment of educational benefits, climate or opportunities" (p.7).

Some feminist authors however, use the term differently. Sexual harassment is sometimes used to describe sexist behavior generally. For example, Wise and Stanley (1987), argue that sexual harassment covers a much broader range of male behaviors than is acknowledged by most authors on the subject.

Including within the term sexual harassment the entire spectrum of sexism, rather than just one extreme of it, has great advantages and provides great strengths. It enables us to analyse sexual harassment using the already developed framework provided by feminist thinking about sexism and sexual politics ... The workplace definition distinguishes between sexism and sexual harassment by suggesting that sexual harassment is 'sexual' and sexism is not; and it also states that sexual harassment is 'more direct' and 'personal' while sexism is more indirect and impersonal. For all practical purposes making such a distinction (or indeed any distinction) between sexism and sexual harassment is untenable. (Wise & Stanley, 1987, p.43).

Liz Kelly (1987), like Wise and Stanley, views sexual harassment as an everyday event, not just a workplace related event, but she argues that sexual harassment is a form of violence. Kelly puts sexual harassment on a

continuum of violent acts committed by men against women. For example, sexual harassment could be placed at the low end of the continuum, rape in the middle, and murder at the high end.

The concept is intended to highlight the fact that sexual violence exists in most women's lives, whilst the form it takes, how women define events and its impact on them at the time and over time varies. The meaning of the continuum does not refer to statistical measurements to clearly defined, discrete categories, or as a linear straight line. (Kelly, 1987, p. 48)

Kelly states that the concept of the continuum enables women to specify the links between "typical" (everyday harassment) and "aberrant" violent behavior, which helps them understand the extent to which male violence is a part of their lives. Russell (1984) labels rape, sexual abuse, and sexual harassment as "sexual exploitation", while Sheffield (1984) describes all forms of sexual violence as "sexual terrorism".

The definitions of sexual harassment provided by both Till and the Human Rights Commission are adopted by this thesis for use in its discussion of contemporary issues in the workplace and in academe, but the concepts (rather than the definition) of sexual harassment as sexism and male violence against women are given serious consideration in the historical section of this thesis.

Other explanations of sexual harassment found in the

literature are empirical definitions, created by researchers who have interviewed and surveyed respondents and categorized their responses into elements then used to define and measure contextual and psychological dimensions of sexual harassment. In spite of numerous studies conducted into the psychological dimensions of sexual harassment during the 1980s, a clear definition has yet to be commonly accepted in the psychology literature (Rubin & Borgers, 1990). Fitzgerald (1990) states that this lack of a widely agreed upon operational definition of the concept is problematic in that it has led to a disarray in the literature and has the effect of diminishing the credibility of all published sexual harassment research reports.

In law, sexual harassment is now considered to be a form of sex discrimination. In Canada, unlike the United States where there are specific laws prohibiting sexual harassment, prohibition against sexual harassment is not generally spelled out, (except in Ontario) but is contained in the federal and provincial Human Rights Codes. The Codes pertaining to sexual harassment are those prohibiting discrimination on the basis of sex in employment or in the provision of services. The legal system has accepted sexual harassment as a form of sex discrimination for only a short period of time in North America, since 1976 in the United

States and since 1980 in Canada.

There are two main legal concepts in Canada and the United States of how a victim can suffer from sexual harassment in the workplace or as a student.

- Quid pro quo harassment - when an employee or student is required to provide sexual favours in exchange for job security or benefits, or in the case of a student, good marks in a course.
- Poisoned environment harassment - When an employee or student is subjected to persistent and pervasive attention and behavior, even in the absence of tangible economic consequences. (Juriansz, April 1990, p. 30)

While these legal concepts of sexual harassment are commonly applied in American sexual harassment litigation, it should be noted that Canadian law does not rank sexual harassment into these hierarchical categories of severe and not so severe. Brian Dickson, at the time Chief Justice of the Supreme Court of Canada, explains how sexual harassment is conceptualized in Canada.

Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee refuse to comply with the demands. Victims of harassment need not demonstrate that they were not hired, were denied a promotion or were dismissed from their employment as a result of their refusal to participate in sexual activity. This form of harassment, in which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment,

albeit a particularly blatant and ugly one. Sexual harassment also encompasses situations in which sexual advances are foisted upon unwilling employees or which employees must endure sexual groping, propositions, and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behavior. (Janzen v. Platy Enterprises Ltd (1989) (paragraph 44447))

It is interesting to note that while the Canadian justice system has not been too concerned with classifying manifestations of sexual harassment according to these two legal concepts, the United States courts refused to accept the concept of "poisoned environment" harassment as a form of sex discrimination until 1986. The legal history of sexual harassment is detailed in Chapter 4.

The next section discusses the range and variety of research studies conducted into sexual harassment along with some of the significant outcomes of the research to date.

## RESEARCH STUDIES INTO SEXUAL HARASSMENT

Research into the behaviors constituting sexual harassment, male and female attitudes towards sexual harassment, and the prevalence of this problem in workplace, academe and other environments began in the late 1970s and continues today.

As indicated in the previous section, considerable data

were collected on the behavioral and attitudinal aspects of sexual harassment throughout the 1980s, in over 30 studies, but the lack of common interviewing or surveying instruments amongst researchers and somewhat arbitrary factors in defining categories for harassing behaviors, have produced inconsistent and sometimes questionable research results (Rubin and Borgers 1990, Fitzgerald 1990). Rubin and Borgers (1990), in an examination and review of twenty one research studies into faculty-student sexual harassment in university environments, explain this further. Much of the research into public attitudes and perceptions of sexual harassment is conducted by way of a questionnaire which defines sexual harassment along a continuum from mild to severe. Respondents are invited to read a number of case studies of male-female interaction and then indicate whether sexual harassment has occurred and to what extent (from mild to severe). One of the problems, they explain, is that the examples used in different studies are not the same, so comparisons between studies are not possible. Fitzgerald (1990, p. 32) adds that there are no assurances that the subjects' responses are stable; that is, if they would answer the same way if asked the question again and if the subjects have a common understanding of what sexual harassment is and what the categories on the Likert scale

mean. Another difficulty, according to Rubin and Borgers (1990), is that many studies base their continuum categories on Till's 1980 "five types of sexual harassment". Till's five definitions are: 1. generalized sexist remarks or behaviors; 2. inappropriate and offensive, but essentially sanction-free, sexual advances; 3. solicitation of sexual activity or other sex-linked behavior by promise of rewards; 4. coercion of sexual activity by threats of punishment; 5. sexual assault. Till identified these behaviors as harassment, based upon descriptive information provided to him by a sample of students from several types of higher educational institutions. Yet only 259 out of 8000 students surveyed responded. Rubin and Borgers (1990, pp. 39-40) voice concern on the validity of Till's study and the subsequent studies based on far from definitive conclusions. On the other hand, it must be acknowledged that few other sexual harassment scholars share Rubin and Borgers' concern. Fitzgerald (1990) defends Till's work on the ground that categories based on the life experiences of over two hundred women, are valid in spite of his "unacceptably low response rate" (pp. 24-39).

While there appear to be limitations to and some controversy surrounding the behavioral measurement studies into sexual harassment of the past decade, some of the

studies while being criticized for methodology, at the same time are quoted frequently by other sexual harassment scholars.

Four widely quoted studies in the literature on sexual harassment in the workplace are the 1987 Los Angeles City Needs Assessment Survey of Women Employees, two surveys conducted by the U.S. Merit Systems Protection Board in 1981 and again in 1988 and a six year study published by Gutek in 1985. The results of these studies are significant in that the findings of all four were similar, in spite of the fact that they sampled different working groups and used diverse research methods.

The 1987 Los Angeles City Commission study, designed as a needs assessment tool for city hall management, focused on the workplace relationships and the workplace frustrations of its female employees. Twelve thousand female full-time and part-time city employees were asked to complete a multiple choice questionnaire. The overall response was 40 percent, with a 46 percent response from full-time employees. In the section of the survey that dealt with discrimination, 36 percent (1722) of the respondents indicated that they had experienced sexual harassment while working for the city in the form of sexual references, propositions, profane language, and offensive visual



depiction, and/or physical contact. Another 39 percent (1855) of the total respondents said they had been sexually harassed by supervisors, coworkers, other city employees, and clients. The job categories with the highest incidents of sexual harassment reports were skilled crafts and protective services. The survey revealed that of those who had experienced sexual harassment 70 percent did not file a complaint. The reasons given were that they did not think it would make a difference and that they feared retaliation. As a result of the survey, the city developed a new policy on sexual harassment and launched a training program on sexual harassment for all employees (Rose, 1989, Appendix C pp. 117-119).

Both the U.S. Merit Systems Protection Board and Barbara A. Gutek were interested in determining what behaviors are exhibited by sexual harassers, the most prevalent forms of sexually harassing behaviors, how these behaviors are perceived by both harassers and harassees, how the harassees react to or cope with sexual harassment and the emotional outcomes of sexual harassment incidents.

In 1981 and 1988 the U.S. Merit Protection Board asked a randomly selected group of twenty thousand federal government employees to complete a survey consisting of a list of multiple choice questions pertaining to workplace

relationships, behaviors of sexual harassment and the respondent's reaction to sexually harassing behaviors directed at her/him. The results of the two surveys were almost identical, so statistics of the most recent survey (1988) are quoted here. Of the twenty thousand employees polled 42% of the women and 14% of the men indicated that they had been sexually harassed in the previous 24 months. The survey listed seven forms of sexual harassment and the respondents recorded their experiences with sexual harassment as follows: 1. unwanted sexual teasing, jokes, remarks or questions (35%) 2. unwanted sexual looks or gestures (28%) 3. unwanted touching, leaning over, cornering or pinching (26%) 4. unwanted pressure for dates (15%) 5. unwanted letters, phone calls, or materials of a sexual nature (12%) 6. unwanted pressure for sex (9%) 7. actual or attempted rape or sexual assault (.8%).

The US Merit Systems Protection Board study data (1988) revealed that 69% of harassers of women were male coworkers, while 31% were male supervisors or superiors. Two thirds of the harassers were married and older than their victims (1981 and 1988 surveys). Interestingly, Gutek's study confirmed the latter findings and found that male supervisors were (44%) somewhat less likely than male coworkers (56%) to be initiators of sexual harassment.

Reactions to sexual harassment were also examined. The US Merit Systems Protection Board survey listed nine types of reactions and the respondents answered as follows: 1. ignored behavior or did nothing (women 52%, men 42%) 2. avoided the person (women 43%, men 31) 3. told the person to stop (women 44%, men 25%) 4. made a joke of behavior (women 20%, men 20%) 5. threatened to tell others (women 14%, men 8%) 6. reported the behavior to supervisor or other official (women 15%, men 7%) 7. went along with the behavior (women 4%, men 7%) 8. transferred, disciplined or gave poor performance rating to harasser (women 2%, men 3%) 9. did something other than above listed reactions (women 10%, men 6%). The study found that women tended to use multiple strategies in dealing with a single harassment incident and that they were more likely to use strategies designed to stop the harassment than were men.

Finally the study asked those who had been sexually harassed if their emotional and physical condition had been affected by the experience. 33% of the women and 21% of the men responded that their emotional and physical condition worsened as a result of sexual harassment. This study did not ask any more specific questions about the mental or physical health of the respondents, but instead gained access to federal government records of sick leave, employee

turnover and departments with low productivity. From these records and the results of the survey the US Merit Systems Protection Board estimated that sexual harassment had cost the U.S. government \$267 million over the previous 24 month period.

Gutek's research, published in 1985 as a book entitled Sex and the Workplace, came up with similar results to the US Merit Protection Board surveys, in spite of the fact that her respondents were from an entirely different target group. Instead of focusing on a specific group of workers such as city workers, government employees or university students, as other researchers had done, Gutek undertook to sample a cross section of the entire Los Angeles area population by selecting phone numbers at random and interviewing people by phone. Her respondents, 827 women and 405 men all of whom were eighteen years old or older, worked at least twenty hours a week and interacted with members of the opposite sex in their work environment. The interviews consisted of a script of multiple choice and open ended questions and were conducted by a field research company.

While many of Gutek's survey questions and the results were similar to those of the surveys already cited, Gutek's focus on male/ female psychosocial differences contributes

new insight into the sexual harassment phenomenon and male and female relations generally. Her examination of employee interaction in the context of organizational structure also reveals important findings. These data showed that women in female dominated jobs and integrated male/female jobs experienced the least amount of harassment, while women in non-traditional male dominated jobs and women working as support workers for men experienced the most amount of sexual harassment. Organizational climates and hierarchical organizational structures played a major role as well, as environments where staff interacted in a "sexy" and power oriented fashion had the highest numbers of sexual harassment incidents. Gutek reports that in some instances management had to fire one sexual harasser after another from the same office. Getting rid of the harasser was not enough to solve the problem, she says. The organizational climate had to be cleaned up as well.

Gutek tackles the controversial question, "is sexual harassment a feminist issue", and she concludes that indeed it is. In asking respondents to define sexual harassment for example, 58% of men and 84% of women said sexual touching was sexual harassment. While men were more likely than women to label any given behavior as sexual, men generally viewed sexual behavior in the workplace as more

appropriate than women, and did not appear to suffer the same degree of emotional distress as women did from the sexual behaviors. Gutek notes that in the questions pertaining to the respondents' experience with sexual behavior at work, women reported mostly negative outcomes of sexual interchanges at work, ranging from having to quit the job to suffering physically and mentally. Men, on the other hand, reported mostly positive outcomes on a personal level and no effect on their work. (The two US Merit Protection Board studies reported similar findings). Gutek concludes that because sexual harassment is not a problem for men, then it is most definitely a woman's issue. Sexual harassment, she claims, is simply a spillover of sex roles from other domains into the workforce. She concludes that it is in everyone's best interest that sexually harassing behavior in the workplace be stopped. Gutek recommends that employers enforce codes of behavior in the workplace in order to alleviate the problem.

These four studies are by no means the only research into the behaviors and attitudes surrounding sexual harassment, but they do highlight some of the main issues. It should be stressed however that to date there is no consensus in the field that any of the results of these empirical studies are valid. Sexually harassing behavior is hard to quantify in

that offensive behavior consists not only of words, but also of tone and non verbal cues that are received negatively by some and in a neutral way by others. The empirical researchers say that sexual harassment is an emerging issue that will become better understood with more consistent research tools and methodology.

In my view, even with consistent research tools, quantitative research into sexual harassment has limited utility. When the research tools improve, quantitative studies will potentially provide us with a more consistent picture on the environmental health of workplaces and academic environments and will perhaps identify areas where we should focus more study, but it is unlikely that they will reveal new ways to provide relief to victims suffering with the problem. Data gathered to date have measured the prevalence of sexist attitudes in workplace and academic contexts, the frequency of sexual harassment incidents, and the differences in the way men and women perceive harassing behavior. While the results of these studies may have been catalysts to the implementation of new policies and procedures to improve the environment at the institutions in which they were conducted, the studies in themselves have not provided new insight into how to resolve the problem. Surprisingly almost none of the sexual harassment research

done to date has used qualitative or feminist research methods, in spite of the fact that the issue was born and raised by feminist academics. Some of the research including Gutek's study, described in the last section, have included some open ended questions in their surveys, but the model used for these studies has been a quantitative one. Having said this, perhaps it should be noted that two books on sexual harassment that reflect some principles of feminist research have recently been published. These books are *Sexual Harassment, Women Speak Out*, edited by Sumrall A.C. and Taylor D, (1992) and *My Word Against Yours: Sexual Harassment in the Workplace*, by "X", (1991). Both books simply present the stories of women who have been sexually harassed. This is somewhat reflective of feminist research method which does not interpret or speak for the interview subjects but instead allows them their own voice. In *Sexual Harassment, Women Speak Out*, Sumrall and Taylor who have collected stories about sexual harassment from women across the United States, take on the role of editors rather than researchers as they publish the stories that sexual harassment victims have written themselves. Although they note in the preface that women experience and deal with sexual harassment differently, they make no attempt to analyze the data, and have no conclusions or recommendations



arising from the women's collective experience. I find this approach limited and these specific books depressing. Liberation for me comes from finding ways to resolve the problem. Although many feminists argue that naming the problem is the first step towards resolution, I suggest that two decades of sexual harassment story telling and frequency studies is enough. It is now time to take a critical look at how government and institutions are dealing with the problem. Chapters 4 and 5 of this thesis attempt to do this.

Sexual harassment, as Gutek (1985) claims, is just one aspect of sex role spillover into the workplace or higher education. What she seems to be suggesting is that one must view sexual harassment in the holistic context of male/female relationships in order to understand and deal with it. Other authors add that woman's role in society, historically as well as contemporarily must be understood in order to know how to fight sexual harassment. This perspective is explored in the following chapters.

Before leaving this chapter however, two more subject areas are included in this review of the literature on sexual harassment; the self help literature, and literature on sexual harassment in higher education.

## SELF HELP SEXUAL HARASSMENT LITERATURE

While academic research findings on sexual harassment have been published almost annually since the issue was born in the late 1970s, sexual harassment literature targeted at the general public has appeared on book store shelves in two main periods; during the late 1970s when Redbook and other women's magazines published surveys on the incidence of sexual harassment and in the early 1990s after Professor Anita Hill publicly accused U.S. Supreme Court nominee Clarence Thomas of sexual harassment. As the early literature has already been reviewed, this section focuses on the popular literature which has emerged in the early 1990s.

While most books pertaining to sexual harassment that were written prior to the 1990s could be found in the Women's Studies section of most book stores, the sexual harassment literature of the 1990s is centred primarily in the business section. Almost all of these publications are American and describe redress procedures relevant only in an American legal context. A Canadian victim of sexual harassment would probably not find most of this American self-help literature particularly useful. On the other hand, a human resource or business manager interested in

designing a sexual harassment policy for the company, might find the some of the suggested procedures for dealing with complaints very relevant. *Step Forward: Sexual Harassment in the Workplace, What You Need To Know* by Webb 1991, is an easy to read guide for managers who want to provide on-the-job training on sexual harassment prevention. Webb, a Harassment Prevention Consultant and staff trainer, who claims to have trained over 60,000 employees in the United States, shares workshop formats and techniques with her readers. A book with the same focus but more scholarly and with considerably greater detail is a 1992 publication by Wagner entitled *Sexual Harassment in the Workplace: How to Prevent, Investigate and Resolve Problems in Your Organization*. This book is a far more comprehensive source book for company managers or sexual harassment prevention trainers than the Webb publication, and includes plentiful notes and references to other research, resources and legal cases. Bravo and Cassedy's 1992 book *The 9 to 5 Guide to Combatting Sexual Harassment. Candid Advice from 9to5*, the National Association of Working Women is an information guide targeted at employees, in both union and non-union workplaces and is the only recent book that is written strictly from a worker's perspective. It informs workers of their legal rights and what they could reasonably expect of

their employer and their union in a sexual harassment complaint. Although the context is American, the principles of union and company complaint procedures in both countries are the same, so this book could have some utility for Canadian employee and union groups.

Three step by step guides to sexual harassment litigation, suitable for both complainants and respondents in an American legal context are also available. *Sexual Harassment: In the Workplace, A Guide to the Law*, by Baxter and Hermle (1988) provides case histories of American sexual harassment cases and discusses the legal implications of the decisions of each case. This book is now out of date due to changes to sexual harassment law in the U.S. in 1991. *Sexual Harassment on the Job* by Petrocelli and Repa (1992) offers a detailed explanation of sexual harassment law differences of the American states and offers advice on options available to victims according to which State they live in and the size of the company they work for. *Sexual Harassment. Know Your Rights!* by Eskenazi and Gallen (1992), offers much the same kind of advice as the Petrocelli/Repa book, but in question and answer format. This book includes articles by Anita Hill and Catherine MacKinnon though which provide some analysis on sexual harassment and the law. It is doubtful that these three

books would be particularly useful to Canadians concerned about sexual harassment.

Of the sexual harassment books published in the 1990s, two written by Arjun Aggarwal are extremely relevant to Canadian readers. Aggarwal, the foremost Canadian legal authority on sexual harassment, published two books in 1992; one a scholarly work which is updated from a 1987 edition of the same title- *Sexual Harassment in the Workplace* and the other written for a general public readership, *Sexual Harassment: A Guide for Understanding and Prevention*. The former book discusses sexual harassment cases and judicial decisions at tribunal, provincial and Supreme Court levels including the influences of American judicial decisions on cases before Canadian courts. The latter book is a how-to manual for victims of sexual harassment, written in a similar format to the Petrocelli/Repa and the Bravo/Cassedy books discussed above. Canadian case history is outlined and Human Rights and legal complaint procedures are explained. Aggarwal also shares his personal frustration with his readers on the apparent lack of political will in Canada to dedicate adequate resources to the enforcement of the Human Rights Act and Human Rights Codes.

Although most of the self-help books are not used in this thesis, it is significant to acknowledge the surge of demand

by the public for more information on sexual harassment prevention, to which these books are obviously catering.

#### SEXUAL HARASSMENT IN HIGHER EDUCATION

While universities started publishing studies on sexual harassment as early as the late 1970s, the most important groundbreaking work on sexual harassment in the context of higher education was a book written by Dziech and Weiner (1984) called *The Lecherous Professor*. These authors made the claim in 1984 that the characteristics of the academic environment are more conducive to the exploitation of female students than any other environment. No studies published since that time have disputed this claim.

The "we-they" mentality of higher education, the tendency to regard the campus as separate from the outside world, causes college professors to diminish or deny complaints about members of their profession... Higher education is more willing than most institutions to tolerate eccentric behavior ... Every campus has its absent minded professor. Unfortunately, many also have an equally well-known "lecher"... The predominate attitude of many students and faculty is that because students reside within the system temporarily and lack a clear or unified voice, they can be taken less seriously than those for whom the campus is a permanent home... Higher education's long standing resistance to the notion of student-as-consumer betrays much about its inability and unwillingness to take students and their complaints seriously. (Dzeich & Weiner 1984, pp. 49-52).

The authors point out that a professor can use his authority

to gain private access to the student. The relationship of trust along with the large imbalance of power between student and professor, contribute as well to conditions conducive to sexual harassment. The minority of female professors at the university are reluctant to defend harassed students, because their own jobs and collegial relationships are at risk. Authors Ramazanoglu 1987, Dagg & Thompson 1988, Hoffman 1989, McKinney 1990 and Paludi (1990) have since supported Dzeich and Weiner's claim adding that female faculty who are largely in the minority in university departments, themselves suffer from high levels of sexual harassment by other faculty members and by male students. Chapter 5 will document and discuss the experiences of these and other women academics.

The largest part of the literature on sexual harassment in academe is comprised of studies that focus on the frequency of professor/student harassment and the differences in perception between men and women of sexual harassment. The Rubin and Borgers (1990, pp. 397-411) article referred to earlier is perhaps most worthy of mention as it provides a review and analysis of twenty one such university studies conducted between 1980 and 1988. The article is entitled "Sexual Harassment in Universities During the 1980s". After summarizing the findings of these

studies they conclude that sexual harassment exists on all types of university campuses and that it often goes unreported, particularly the less severe cases. Most students believe they would report an incident if it happened but when it does, many fail to do so. The studies also indicate that female students are more likely to report sexual harassment to a woman outside the harasser's department. Findings on the perceptual differences between men and women suggest that women are more likely to define behaviors as harassing while men are more likely to believe that victims have contributed to their own problems. Men tend to be more happy with sexual harassment complaint procedures than women. This is likely because men have less need to use them, the authors speculate. Rubin and Borgers note that the frequency studies over the decade have indicated little improvement in the status of sexual harassment and they recommend that universities examine their policies and procedures and evaluate their effectiveness.

University policies and procedures are in fact examined in three different articles. Schneider (1987) reports on the outcome of research she conducted with female graduate students assessing the applicability and effectiveness of the university's sexual harassment policy. Schneider



concludes that the simple establishment of policy and procedures does not result in a significant increase of reported cases. Schneider goes on to identify the barriers and the contradictions inherent in the procedures.

Williams, Lam and Shively (1992) discuss a longitudinal study they conducted on the impact of university sexual harassment policy on female students. Their results show a decline in reported cases of faculty/student harassment over a six year period but an increase in the peer harassment of students. The study concludes that sanctions taken against offenders in the early stages of the policy appeared to work as a deterrent to faculty but not to students due to their more transient residency. The study recommends a more consistent approach to sexual harassment awareness training for undergraduate students.

Riger (1991), concerned that the majority of victims do not report incidents of sexual harassment, suggests male bias in policy and procedures as a possible reason. Women perceive sexual harassment differently than men do and their orientation to dispute-resolution is likely different as well, she says. Riger outlines how policy definitions and the nature of dispute resolution procedures fit men better than women. This gender bias is likely to discourage women from using the complaint procedure, she says. More analysis of

institutional policy and procedures is explored in Chapters 5 and 6.

Another area of institutional policy that is often connected to sexual harassment policy at colleges and universities is the issue of consensual sexual relationships between faculty members and between faculty members and students. This is an extremely controversial subject around which a considerable literature has grown. Although, in my view, the existence or the absence of an institutional policy on consensual relationships could impact on the effectiveness of the institution's sexual harassment policy and procedures, I do not consider it prudent to enter into this debate in this thesis as it could easily merit a thesis in its own right. It may be important to note however, that consensual relationship policy may be a relevant consideration for future studies on sexual harassment prevention.

Before leaving the topic of literature on sexual harassment in higher education it is essential to mention a book that in some ways as important in the 1990s as *The Lecherous Professor* was in the 1980s. *Ivory Power: Sexual Harassment on Campus* edited by Michele Paludi (1990) is a collection of articles by sexual harassment scholars and prevention practitioners. It is organized into four

sections; 1. conceptual and methodological issues, 2. impact on cognitive, physical, and emotional well being, 3. a look at harassers and 4. handling complaints of sexual harassment on campus. We have already discussed some of the methodological issues raised by Fitzgerald in section 1 of this book, cited earlier in the chapter. Chapter 6 of this thesis considers some of the institutional strategies suggested in section 4.

#### CONCLUSION

The Women's Movement brought sexual harassment to the attention of the public in the mid 1970s but it was not until late 1991 that North America was given the opportunity to see a case of sexual harassment on television. Law professor Anita Hill gave testimony that she had been sexually harassed by Judge Clarence Thomas who was being considered as a candidate for U.S. Supreme Court. The televised judiciary hearings went on for several days. Newspapers carried the daily testimony on their front pages and feature articles on sexual harassment on the back pages. This case was a significant one in sexual harassment history. For the first time in North America the issue of sexual harassment was dealt with in a collective and public

way and shortly after this case, victims of sexual harassment in the United States won new legal rights.

Today in 1993, eighteen years after the issue of sexual harassment emerged, there are signs that the concept of sexual harassment is finally becoming understood, at least in the United States. For example, nine months after Hill's testimony, inquiries sent to the American Equal Employment Opportunity Commission rose by 150 percent, and actual charges filed rose 23 percent (Sandroff, 1992, in Working Women, June 1992, p.49). The "Anita Hill effect" also played a large part in motivating record numbers of women into running for public office and winning in the last U.S. national election, Sandroff says. Reporting on the results of two surveys conducted by Working Women magazine, Sandroff adds that 81 percent of Fortune 500 companies now have training programs on sexual harassment compared to only 60 percent in 1988. She attributes this change to the 1991 Civil Rights Act which gives victims the right to sue their companies for large rewards. "The color green is the most powerful motivation in this country", she says ( Sandroff, 1992, p. 51). While there seems to be a change in national consciousness towards sexual harassment, in the United States there are no comparable indications of increased awareness of sexual harassment in Canada. Perhaps

Sandroff's comment about the motivation of money is apt, as Canadian employers have very little to lose in comparison with the monetary penalties American employers are liable for in sexual harassment settlements.

The literature on sexual harassment may also be an indication of public concern on the issue. The popular media mostly ignored sexual harassment in the 1980s. Even the academic literature on the subject was small compared to other gender equity issues during the late 1970s and the 1980s. Since 1990, however there has been a dramatic increase of both popular and academic literature on sexual harassment in the United States, but not in Canada.

Literature on sexual harassment in higher education in both countries however, has not followed the same timetable as the literature on sexual harassment in the workplace. Dziech and Weiner in 1984 in their groundbreaking book *The Lecherous Professor* told us that the university is more conducive to sexual harassment than other working environments. Dziech and Weiner (1984) explained that the tendency to regard the campus as separate from the outside world, and an acceptance of eccentric behavior, causes professors to diminish or deny complaints about their colleagues. Literature written since 1984 up to present times, seems to indicate that institutions of higher

education are more difficult to change than private sector institutions.

In the past decade, sexual harassment research has focused primarily on identification and measurement of the problem in the workplace and in academe. In my view, while this kind of research was useful in validating women's experience and confirming that sexual harassment exists, research in the 1990s must move on and search for strategies that will alleviate this behavior. Anita Hill, who testified against Clarence Thomas agrees.

Research is helpful, appreciated, and I hope will be required reading for all legislators. Yet research has what I see as one shortcoming; it focuses on our reaction to harassment, not on the harasser. How we enlighten men who are currently in the workplace about behavior that is beneath our (and their) dignity is the challenge of the future. Research shows that men tend to have a narrower definition of what constitutes harassment than do women. How do we raise a generation of men who won't need to be reeducated as adults"? (Hill, 1992, p. 33)

Hill asks some challenging questions, some that this thesis attempts to address in the final chapters. The next chapter, however, starts to unravel the origins of sexism and sexual harassment through an examination of women's status in prehistoric times up to the present.

CHAPTER 3      THE ORIGIN OF PATRIARCHY:  
Sexual Harassment in historical context

As Mary Daly (1984) suggests, to discuss one aspect of patriarchal oppression (ie. sexual harassment) in isolation from the entire context of patriarchy would preclude the true meaning and implications of sexual harassment. "The issue may be extremely important in itself", she says, "but if it is not seen in context, as interconnected with all \* gynocidal atrocities, it cannot really be seen" (p. 322).

( \* a number of feminist authors cited in this chapter use words with a gyn prefix. Gyn is a Greek prefix that means woman or female)

With Daly's suggestion in mind, this chapter reviews the history of women in western society in order to put the current issue of sexual harassment into perspective. Admittedly this is a huge subject area and one that cannot be thoroughly covered in one chapter of a thesis, but even an overview of women's history provides essential conceptual tools in the analysis of sexual harassment. The literature reviewed in the last chapter indicates that power differences between men and women are at the basis of the sexual harassment issue. It is important to understand how the power differential came into being in order to determine how women's oppression can be overcome (Code, 1988, p.18).

So although the history of women may appear to be far removed from sexual harassment in academe, in fact it is not. It is fundamentally connected.

The historians chosen, Riane Eisler, Marilyn French, Gerda Lerner, Rosalind Miles, and Barbara Walker are not the only authorities on women's history, but their feminist focus provides an understanding of the linkages between European patriarchies of the past and those of western culture today. As Lerner puts it,

Men's version of history, legitimated as the universal truth, has presented women as marginal to civilization and as the victim of historical process... The denial to women of their history has reinforced their acceptance of the ideology of patriarchy and has undermined the individual woman's sense of self worth. (Lerner, 1986, p.223)

All these authors link historical events with contemporary ones and warn that for the last five millennia, women have been most abused when they have gained a little power. A backlash against women is occurring again today, they claim, and will end in catastrophe for the entire human race unless society is transformed from a structure of domination into a structure of equal partnership of women and men.

This chapter first explores the origins of patriarchy and the role of religion in the subordination of women and then considers the patriarchal structures of contemporary western culture. It should be emphasized that the research



conducted by these authors is focused on women living in Europe and the Middle East and the history of patriarchy is about European and western culture. There is evidence that other Goddess cultures have existed in other cultures, that are not reflected in this chapter.

## THE HISTORY OF PATRIARCHY

### The Age of the Goddess

The image of early civilization conjures up the vision of a large, muscular caveman armed with a club stalking the savanna for that day's dinner while his little mate busies herself back at the cave with tending the fire and minding the children. Rosalind Miles (1988, pp. 24-33) claims the myth of "Man the Hunter" has very little truth. In this myth, she says, man invents the family by impregnating his mate and stashing her away in the cave. He then provides for her and the family by killing animals. In reality, the earliest families consisted of females and their children and societies were centred on and organized through the mother. Males were casual and peripheral to the family. Mature males left their mother's home and attached themselves to other female networks. Mature females stayed close to their mothers attaching their mates to their

mother's network, hence the beginnings of matrilineal based societies were formed. Men were not the major providers, she says. There is evidence from a number of sites throughout the Pleistocene age that on a daily basis, women provided as much as eighty percent of the tribe's total food intake. Women hunted along with men but meat could not be relied upon as a regular food source as success in the hunt was inconsistent. Miles adds that the image of the cave man in armed combat with a ferocious beast is also erroneous. Most forms of hunting did not involve armed struggle against wild animals. Most prey consisted of wounded or sick animals. Trapping and snaring techniques were also devised where the animal would die on its own. The only aggressive aspect to the cave man's role was as a protector of the children and of the group. Men fought and killed when their survival or the lives of their group were threatened. This is not to say there were not incidents where women of prehistory were victimized and brutalized by men, Miles states. There were such incidents. But women of the Stone Age hunter-gather societies were far less subjugated than many of their female descendants in the more "advanced" societies today, she claims. Evidence from the Stone Age reveals women had special status as women.

For woman, with her inexplicable moon-rhythms and power of creating new life, was the most sacred mystery of

the tribe. So miraculous, so powerful, she had to be more than man-more than human. As primitive man began to think symbolically, there was only one explanation. Woman was the primary symbol, the greatest entity of all - a goddess, no less. (Miles, 1988, p.35)

Gerda Ierner (1986) and Riane Eisler (1987) suggest that the time frame from the end of the Paleolithic Period (cave dwelling) to the middle of the Neolithic Period (beginning of agriculture) marked the peak and decline of empowerment for women and her special status with men.

In that period a goddess religion was practised that celebrated the fertility and the abundance of nature. By association women were believed to have special powers given by the Goddess, because of their abilities to give birth and suckle their young. Women who survived to old age were greatly respected, as it was believed that after menopause women retained menstrual blood which made them wise. The older they were the more intelligence and wisdom they acquired from the Goddess. Female elders occupied the most important leadership, administrative and judicial roles in their communities.

One such Goddess-worshipping society that existed from approximately 7000 B.C. to 3000 B.C. has been named the Old Europeans. This society, located along the Aegean Sea and east central and central Europe was peaceful, artistic, egalitarian, democratic, structured as a matrilineal kinship

system, and women held power in the community but did not rule over men. Eisler points out that significant technical advances were made in this prehistoric society. One of the best kept historical secrets, she says, is that practically all the material and social technologies fundamental to civilization were developed then. The principles of food growing, construction, clothing technologies, the use of natural resources such as wood, fibers, leather, and later, metals in manufacturing and important non-material technologies, such as law, government, architecture, town planning, administration, education, trade, religion, dance, drama, and art were all known and practised by the Goddess worshipping societies of Old Europe. In fact, she says, thanks to new scientific dating methods, there is evidence to indicate that Neolithic societies that had standards of living higher than many of the world's poorer nations today. Eisler suggests there is evidence that women invented agriculture-the domestication of plants and animals, pottery, spinning and weaving cloth. There is also evidence that women were employed as judges, magistrates and sages, even after male dominance was imposed. (Eisler, 1987, pp.66-69).

But this prehistoric Renaissance was not to last. Beginning in Europe somewhere around 4200 B.C. the ancient

world was battered by wave after wave of warrior invasions and much of the old world started to be governed by autocratic male rule. In Anatolia, Turkey, where the people of Catal Huyuk had lived in peace for thousands of years, a male dominated tribe called the Hittites took over.

Although the Hittites allowed the Goddess to be worshipped, she was increasingly relegated to the status of the wife or mother of the new male gods. (Eisler, 1987, pp. 56-57).

Around the same time the Old European communities started to be invaded by warring bands of Indo-Europeans, the Kurgans, who swept down from the north-east. Sometime later, the Hebrews, desert nomads of the south, invaded a peaceful goddess worshipping society in Canaan called the Philistines.

Both the Kurgans and the Hebrews worshipped a fierce and angry god of war, structured their villages patriarchally, and were governed by warrior-priests. Although the Hebrews were more technologically advanced than the Kurgans, and their laws somewhat more humane, the social organization of both groups was based on male dominance, male violence directed at women and weaker men, and a generally hierarchical and authoritarian structure. It was standard practice in early Kurgan and Hebrew invasions to kill the men and the children but to spare some of the young women

who could be taken as concubines and slaves. Once the invaders realized the value of the female slaves, they enslaved men as well, but men were not enslaved in the first wave of invasions. The women who survived the attacks of the invaders were transformed overnight from autonomous persons to the property of the men who defeated them. Female slaves were expected to work, to provide sexual services for the men and to produce children who in turn would become slaves for their masters. The free wives and daughters of the invaders were on a higher rung of hierarchy than the slaves as they held class privileges, some legal rights and free women could also own slaves. The slave, at the bottom of the hierarchy had no claim to herself or her children. Yet free wives and daughters, considered to be the property of their husbands and fathers, could be sold or traded just like slaves, and men had to purchase wives from the women's fathers. Wives of upper class men had considerably more freedom, power and benefits than lower class women, but their status was precarious. If a woman failed to produce a male child or angered her husband in any way, he could divorce her and her status would be gone. Yet women could not divorce men for abuse, cruelty or adultery. In fact men were expected to be adulterous, but women were killed for it (Eisler, 1987, pp. 95-96 and Lerner, 1986,

pp. 96 and 112-114).

Attacks from these warrior societies proved too much for the Old Europeans and the Philistines who could defend themselves neither against force of the attacks nor the imposition of the attackers' rules and ideology. By 3500 B.C. the Old European egalitarian social structure, goddess religion and their economy had been altered dramatically. Old European art dwindled and the creation of goddess figurines and temples ceased. (Eisler, 1987, pp. 44, 248-251 and Eisler, 1990, p.217).

The Kurgan invasion of Old Europe, according to Eisler, was the turning point in Western civilization's history. The Old European societies worshipped the life generating and nurturing powers of the universe which they symbolized in the chalice. Eisler calls the Old European social system a partnership society as both men and women participated equally in professional and religious roles in the community and their technological efforts focused on improving the quality of life. The Kurgans, worshipped the blade and the power to take life rather than give it. The blade symbolized the ultimate power to establish and enforce domination in a social system that required men to be violent and dominating. The main focus of all technological developments in this society was to perfect better and more

effective instruments of war. Eisler calls this type of social organization a dominator society . Western society is still structured on the dominator model, she says and our highest priority is still the development of technologies of destruction. The blade now technologically more lethal than ever, threatens to kill us all, she says. Eisler points out that in the late twentieth century we are at a crossroad. We have two options-to blow ourselves up or change our ideology. Eisler is optimistic that the time is right in history for major change to take place in Western society and that after a five thousand year interruption, the peaceful, creative and egalitarian evolution of western culture will resume. (Eisler 1987, p. xvii and Eisler 1990, pp. 216-217).

#### The Death of the Goddess

Exactly why and how woman's status declined from goddess to normal being to inferior being can only be speculated upon from clues derived from archaeological artifacts and myths and legends handed down the years. Miles speculates that men started to question the Goddess's power some 3500 years ago when they started to take a more active role in agriculture and discovered they had a role in biological creation. Where the Goddess had been the source of life,



now she was just the passive field while man "drunk with the power of his new-found phallocentricity, was plough, seed, grain-chute and ovipositor all in one" (Miles, 1988, pp. 62-64). While the Goddess was not immediately overthrown, the symbolic power of the phallus increased.

Walker (1985) thinks the reason for the demotion of women and the destruction of the Goddess religion was due to man's underlying fear of death and his jealousy of women's procreative powers. It should be noted that women never had the actual power of the Goddess as there is no evidence that women have ever ruled over men, but women did have the symbolic power of the Goddess. The Goddess entity was believed to have consisted of a Trinity of aspects- the Virgin, The Mother and the Crone or alternatively Creator, Preserver and Destroyer. The Great Mother was the embodiment of the earth, the universe and nature who created life, nurtured it and then killed it off in order to start a new cycle. While the Old Europeans focused on the sexual and the nurturing aspects of the Goddess and perceived the Crone as a wise old woman who maintained the balance and karma of nature, the character of the Crone was seen as black and evil by other Goddess worshipping societies. As archaeological findings from other parts of the ancient world reflected later periods than the Old Europe finds, it

is not known whether the character of the Goddess evolved as a result of mergers with sword worshipping invaders or was always interpreted differently in different regions of the continent. There is certainly evidence that invaders appropriated the Goddess and turned her into a patron of war, but what is less clear is how widespread the "bad Mother" archetype was before the invasions. In any event, the Destroyer Crone took on some terrifying aspects. She came to be depicted as a horrible monster with blood red eyes, a toothy vulva dripping with blood and an insatiable appetite for men. While the Virgin and the Mother created and nurtured life through sexuality the Crone devoured life through her sexuality. There was considerable variation on this depiction and interpretation of the Crone throughout Europe, Asia and the Mediterranean, but in the period from 2000 B.C. up to around 200 A.D. some societies started to worship and emulate the blacker nature of the Goddess attributes. Miles cites evidence of warlike Goddess societies where women soldiers fought alongside men in the front lines of battles. Queens of Egypt and of Celtic Britain took active leadership roles in military planning and on the battle field, both societies where the bloodthirsty nature of the Great Goddess was celebrated (Miles, 1988, pp. 40-45) .

In societies motivated by fear of the Crone and whose primary preoccupation became domination over other tribes, it is easy to see how partnership roles between men and women could have deteriorated into dominator relationships.

Walker (1985, pp. 17-21) claims that the collective unconsciousness of males has always associated the image of women with the Terrible Crone-the terminator of life. Citing examples from early Chinese, Greek, New Guinea and Maori cultures, Walker gives numerous accounts of man's fear of female genitals. For example, Moslems were so frightened by the mouthlike vulva she says, which they called insatiable, that by extension they labeled women's mouths obscene and forced them to cover their mouths in public. The fear may have arisen from men's sense of diminishment in sexual climax, still often called the "little death", she says. Along with this fear came a notion that women used up a portion of a man's vital life force during sex which explained why women outlived men. This belief, along with the fear of old women generally, resulted in the mistreatment of widows which is still the case today and from the twelfth to nineteenth centuries the torture and killing of older women who were labeled as witches. Not surprisingly then, in the formulation of new religions developed by men in the Neolithic age women were said to be

inferior and cursed by God, sexual passion was declared evil, and an after life was created.

Much of Western patriarchal prejudice against women can be traced, through labyrinthine pathways of the unconscious, to symbolic feminization of man's ultimate fear: the fear of his own final non-existence. To Christian men, even a hell of eternal torture seemed preferable to this. (Walker, 1985, p.19)

As Walker points out the most important task of the new religion was to eradicate the power of the old Crone and to kill death itself.

Lerner explains that the establishment of patriarchy and the loss of rights for women occurred not as one event but as a process that took over 2500 years to complete.

Matrilineal societies in the Ancient Near East suffered a similar demise but were defeated at a different pace and at different times. Historically, matrilineal societies have been unable to withstand the introduction of competitive, exploitative, techno-economic systems, she observes (Lerner 1986, pp. 30-31).

Lerner posits that the complete change from matrilineal to patriarchal structure involved the following interventions:

1. All aspects of state and government were structured in the form of a patriarchal hierarchy.
2. Men were taught to dominate women, men with lower status in their community and then finally others as slaves.
3. A man's class was based on his relationship to the means of production. Owners dominated workers. A

woman's class was mediated through sexual ties to a man.

4. Women's sexual subordination was institutionalized in law and enforced by the full power of the state.
5. Women's cooperation in the system was secured by force, economic dependency on men, and class privileges bestowed on conforming women of the upper classes.
6. Powerful goddesses were dethroned or transformed into the wife consort of the chief male god as monotheism attacked and defeated Goddess cults.
7. Women's sexuality (other than being used for procreation) was declared sinful and evil.
8. Women were excluded from religion and the community allowed only the role of mother.
9. Women were devalued symbolically in relation to the divine.
10. After the invention of writing and the establishment of formal learning, women were excluded from equal access to such education.

(Lerner, 1986, p. 54 and pp. 9-10)

Marilyn French (1985, p. 87) adds that patriarchy could not have been achieved without breaking the bonds of solidarity among women. In the matrilocal system, women maintain strong relationships with their mothers, sisters and grandmothers. Patrilocality demands that a woman leave her support system and move to her husband's home where she was both isolated and vulnerable to abuse by her husband and her inlaws. Later, refinements on the isolation of women were developed, she says, which resulted in the exclusion of women from the public realm and the confinement of women to

the home. The final step in fragmenting female unity was to treat women as if they were invisible or non-persons. Many men still treat all women as sex objects or subordinates and refuse to recognize their contributions as workers in the workplace, she says. Walker (1985, p.30) comments that older women particularly are made invisible in modern society, by the "mythic mirrors of our culture", television and movies that show older men but never with women their own age.

#### The Maintenance of Patriarchy

Patriarchal takeovers in the ancient world colonized and enslaved women but how did the patriarchs manage to destroy women's high self esteem and their Goddess belief systems that had been in place for thousands of years? Miles claims that patriarchal religious conversion succeeded only because the patriarchs tightened their grip on women slowly and because Goddess symbols were cannibalized or corrupted over time ( Miles, 1988, pp. 91- 102). For example, after the Hebrews conquered the Philistines, it appears that initially, worship of the Goddess was tolerated so long as worship of the male deity was practised at the same time, but as biblical accounts suggest, after a time Moses put a stop to this and demanded complete loyalty to Jehovah. In

the early stages of the monotheistic religions, women were actively recruited and invited to be both followers and activists in Judaism, Buddhism, Islam and Christianity. Miles cites examples of early female missionaries and warriors who fought courageously to defend these faiths, likely never imagining that their new religions would eventually banish women from public life. Examples of theft and corruption of Goddess symbols are offered by Walker. Walker (1985, p. 38) explains that the Goddess Trinity of the Virgin, the Mother and the Crone was later converted by the Christians into the Father, the Son and the Holy Ghost. The attributes of the Father and son corresponded to those of the Mother and Virgin, while the Holy Ghost was representative of the Crone. Jehovah was said to have brought light to the world-just as the Goddess had done. But the patriarchs elevated their god one notch above the Goddess. The Goddess was heaven and earth but the male god was said to be ruler of heaven and earth. So the power of the Goddess was appropriated and given to the male God, yet at the same time her very embodiment-her fertility, her sacred menstrual blood, in fact her whole body were denigrated and declared unclean, ugly and evil. Her sacred symbols such as the tree of life and the snake were turned into agents of the devil as the Adam and Eve story

illustrates. Daly (1978, pp. 79-80) adds that the goddess's most sacred symbol, the tree of life was transformed by Christian practice into the tree of death. The cross (which was a symbol of the tree) became the instrument by which people were tortured and killed. In later times, thousands of women accused of witchcraft were tortured and then burned to death at the stake (another symbol of the tree of life).

Miles comments that the concept of monotheism turned out to be not only a religion but a relation of power.

Any 'One God' idea has a built-in notion of primacy and supremacy; that One God is god above all others and his adherents are supreme over all non-believers... With a genuine belief in the One God came the inescapable duty to enforce it on others; with the claim to a patent on truth came for the first time ideas of orthodoxy, habits of bigotry and the practise of persecution ... Under patriarchal monotheism, womanhood was a life sentence of second-order existence. (Miles, 1988, pp. 92-93)

Kreps (1990, p. 21) believes that the "remything" of science in addition to religion was what cemented patriarchy as the ideology of western civilization. The scientific remything of women as the inferior sex, she explains, was developed in classical Greece, most notably by Aristotle. Aristotle claimed that women were inferior to men because they were born defective or like a mutilated male. The two symbol constructs of the Bible's fallen Eve along with Aristotle's woman as defective became the foundation of Western civilization's symbol system, she says.



Subordination of women came to be seen as not only normal but also natural and therefore right.

Yet not every women submitted to the "relentless ideological bombardment of the patriarchal systems". There are many instances of women throughout history who resisted oppression but such resistance was all too frequently shortlived (Miles, 1988, p. 102). As Lerner (1986, p.219) suggests, resistance against the patriarchy was doomed largely because of a lack of support by the majority of women in that society. The propaganda was powerful and without any other sources of information, most women internalized the self-hating ideology. In fact women assisted the patriarchy in upholding the ruies. For example, in biblical times, the entire community gathered to stone an adulteress or a prostitute to death. Even in this century women continue to assist the patriarchy in the same destructive ways.

Miles notes that the patriarchal propaganda campaign is just as strong today. Women feel exposed and vulnerable about their bodies, she says. The media bombards women with messages that their bodies should measure a male-defined ideal; beautiful, petite and thin. On the other hand, newscast after newscast reminds us that violence against women is escalating and that women are too weak and

vulnerable to protect themselves against violent attack.

Naomi Wolf (1990, pp. 16-17) adds that while religion no longer has a hold on the minds of women in the west, the "Beauty Myth" is stronger than ever before. Women's unconscious anxieties about their appearance fuels some of the nation's most powerful industries -the \$33-billion a year diet industry, the \$20 billion cosmetic industry, the \$300 million cosmetic surgery industry and the \$7 billion pornography industry, Wolf claims.

Second rate, woman-born, the female body is always in need of completion, of man-made ways to perfect it. The Rites of Beauty offer to fire the female body in the kiln of beauty to purge its dross, to give it its "finish". The promise that Christianity makes about its death, the Rites make about pain: that the believer will awaken on the other shore, in a body of light cleansed of mortal female stain... In the Rites women purge themselves of the stain of their gender.  
(Wolf, 1990, p. 94)

Wolf (1990, p. 185) says that the Beauty Myth is not just undermining women's self-confidence. It is also making them sick. A 1985 American survey revealed that 90% of American women think they are too fat and 60% of American women have serious eating disorders. Wolf explains that fashion models, the icons of beauty that young women emulate, a generation ago weighed 8% less than the average woman but today weigh 23% less than the average American woman and many show anorexic behavior (Wolf, 1990, pp. 184-185). Anorexia and bulimia, diseases in which the victims starve

themselves because they fear food, strike about one percent of the female population annually.

Wolf states that women are again in the midst of a violent backlash against feminism and that one of the strongest patriarchal weapons against women's advancement is the Beauty Myth. In the 1970s as the Women's Movement gained momentum, the caricature of the "Ugly Feminist" was resurrected to dog the steps of the women's movement, she says. This caricature was not new: it was used to ridicule feminists of the nineteenth century as well (Wolf, 1990, pp 18-19). Although the women's movement succeeded in elevating the status of women in society, the "Ugly Feminist" label did considerable damage. Young women today reject the label of feminism because they believe it's unfeminine. Wolf contends that perpetuation of the Beauty Myth serves the purposes of capitalism and the mega-million dollar beauty industry, but it also maintains the interests of patriarchy.

### The Backlash

Women have been in a subordinate position to men since the Neolithic period, but history shows that women attain greater degrees of freedom during periods of peace or

prosperity. During these times of stability, values stereotypically attributed to women such as, affiliation, caring and non-violence also become more acceptable (Eisler, 1987, p. 152). Yet, every time women gain some power and self confidence, they are hit hard by a terrifying backlash which coincidentally occurs during a decline in society's stability or its economy.

The most vicious and sustained backlash against women in history was the witchhunt- a well organized campaign, initiated, financed and executed by the Church and State, which resulted in the torture and killing of millions of innocent women for over four centuries (Eisler, 1987, p. 140). The witch hunt started in the thirteenth century after a period in which women had achieved considerable autonomy. In the two centuries preceding, because the Crusades had claimed heavy losses and because the large numbers of men in the clergy were required to be celibate, women out numbered men and many were single. Women worked in a variety of trades and in some places had the monopoly on certain ones, such as brewing and spinning. Women were shipwrights, tailors, mercers, grocers, retailers and also healers and surgeons (they were unlicensed as women were not allowed into medical school). Women were always paid less than men and were confined to the lower status jobs only,

except in the case of medicine which they practised illegally (French, 1985, pp. 162-163).

Eisler (1988, p.141) suggests that one impetus for the witch persecutions was the competition between church trained doctors and "wise-women" healers. Many of the wise-women clung to Goddess religious beliefs that carried a tradition of naturopathic healing. The herbal remedies of the healers were far more successful than the medical practices of the male physicians and not surprisingly the wise women attracted more patients. The church and the physicians declared unlicensed medicine illegal but that did not stop the sick from seeking out healers or healers from practising their trade. The witch hunt began as the church accused the wise-woman of healing by way of magical powers acquired from having sex with the devil. Witches were accused of making men impotent, eating newborn babies, turning milk sour, causing cattle to die, making children sick. They were also charged with giving women contraceptive herbs, performing abortions and giving women in labour ergot to ease their pain (French, 1985, p.167). Christian religion dictated that women must pay for Eve's disobedience by giving birth and suffering labour pains. Tampering with their role as childbearer or even taking pain killers for childbirth, were considered to be crimes against

God. First healers and then women who were not living under the protection of a man, i.e. single, widowed and independent women were targeted as witch suspects and all accused were then tortured into confessing that they practiced witchcraft. After the confession, the women were burned at the stake. Those accused of witchcraft and heresy were mostly women but sometimes they were men or members of ethnic groups the church found threatening. Eisler (1987, p. 141) states that the officially sanctioned witch-hunts, as well as the Church's repeated denunciation of women as a sex, were essential elements in the imposition and maintenance of androcracy and in the prevention of a Goddess resurgence.

In spite of violent repression however, as Eisler (1987, p.137) observes, like plants that refuse to be killed no matter how often they are crushed or cut back, women have again and again sought to establish their place in the sun.

In modern times women have won unprecedented rights, but even in the last two hundred years, rights have been won and lost in waves of feminist ascendancy followed by a backlash.

Faludi (1991, pp. 48-59) documents this trend: the rise of the women's movement of the mid-19th century and the counterreaction at the end of the century; the suffrage movement of 1910 that wins the vote for women, directly

followed by a red baiting campaign against leaders of women's rights; the encouragement of women to enter the workforce during World War II, followed by a purge of women from the workforce when the troops returned from war. Twenty years later in the late 1960s and early 1970s the most successful women's liberation movement in history makes substantial gains in the areas of employment and fertility but once again in the 1990s the backlash has started to wash this progress away.

The 1970s women's movement ... forged historic and record numbers of equal employment and anti-discrimination policies, forcing open the doors to lucrative and elite "male professions, and ultimately helping to legalize abortion. And now, once again, as the backlash crests and breaks, it crashes hardest on these two shores (employment and fertility)-dismantling the federal apparatus for enforcing equal opportunity, gutting crucial legal rulings for working women, undermining abortion rights, halting birth control research, and promulgating "fetal protection" and "fetal rights" policies that have shut women out of lucrative jobs, caused them to undergo invasive obstetric surgeries against their will and thrown "bad" mothers in jail.  
(Faludi, 1991, p.55)

Faludi claims that the perception that women now have more equality in the workplace than they did twenty years ago is largely an illusion created by the media. The pay gap between men and women is slightly less than it was in 1955, she says, but that is not because women are earning more, it's because men are earning less. The percentage of women working in low paying service and secretarial work ghettos

has increased while the percentage of women in non-traditional or professional occupations has barely increased (2%) in the last fifteen years. She adds that the prevalence of sexual harassment and sex discrimination in the workplace today is also at the same level as it was twenty years ago (Faludi, 1991, pp. 368-369). Throughout the past twenty years, as women have been losing ground in both the public and the private arena, the media has insisted that women have won the war against inequality. The media declaration that the 1990s are the "post-feminist" era is patriarchal, backlash propaganda, she says.

Journalist Janice Kennedy (TV Times, January 10, 1992, p.64) observes that television commercials are more insulting to women today than they were even five years ago. Once again women are being depicted as ornaments while men with authoritative voices do the voice over. Until television stops portraying women as ornaments, she says, harassment and violence will continue in society. Donna Jackson (New Woman, January 1992, p. 80) claims that television programming is increasingly portraying women in the stereotypical categories of sex object, housewives and "career bitches". Images of women abound that fifteen or twenty years ago would have been deemed socially unacceptable, she says. In spite of the fact that there is



a high percentage of single mothers, they have been banished from the airwaves and replaced with fantasy single dads. Independent women are being made invisible she says.

Eisler's observation that backlashes occur during times of economic instability and are evident by a resurgence of dominator values, gives credence to Faludi's argument that a backlash is indeed underway today. Both Canada and the United States are suffering from high levels of unemployment and recession and the level of crime and violence is increasing in both countries. A 1991 Canadian Federal government report entitled "The War Against Women" reveals that violent crimes against women are also at an all time high. For example, more than ten percent of all Canadian women are battered by their partners, two women are killed by their husbands or partners each week, every 17 minutes a sexual assault is committed in Canada and 90% of the victims are women (The Parliamentary Sub-Committee on the Status of Women, Minister of Supply and Services, 1991).

A Canadian panel studying violence against women in 1992, observed that the justice system's response to abuse of women is inconsistent across the country and does not always take complaints seriously. Offenders sentenced to jail often emerge from their jail term, unrepentant, untreated and more hostile than when they entered. The legal system is

not helping to end the violence against women, the panel was told repeatedly, at public meetings held across the country (Vancouver Sun, January 25, 1992, p.B8, and Canadian Panel on Violence Against Women, Minister of Supply & Services, 1993). Miles (1991, p.218) comments that historically, violence against women has been most prevalent in wartime . But what is new, she says, is the " random eruption of barbarous male sadism into peacetime, prosperous suburbs in the clockwork orange pursuit of recreational savagery for its own sick sweet sake". Miles adds that women are not the only victims of violence. In fact more victims are male.

The acceptance of violence at every level, from the highest reaches of the judiciary and executive to the unemployed youth ... the fatalistic conviction that aggression is unanswerable, a law of nature, may be seen as the official responses to the problem - including the utter failure to identify it as a problem.... Violence will always, must always demand a victim and that the victim will always, must always, be someone weaker, smaller, and lower in the hierarchy of violence, if not of suffering. (Miles, 1991, pp. 236-237)

#### BEYOND PATRIARCHY - VISIONS OF A BETTER SOCIETY

Although women have long had second class status to men, their collective experience as females has been different from other oppressed groups. When patrilocality took wives away from their family homes and the support systems of

their mothers and sisters, women found themselves divided and conquered. Other oppressed groups in history, such as Afro-Americans, and Jews, for example, banded together and fought oppression collectively, but women who were confined to the home of their husbands, did not have the opportunity to connect and consolidate with a support base. As hierarchies replaced egalitarian social structures and social status became based on class and position, more walls were erected between women. While women of all classes, lacked the same fundamental rights, the disparities in life style between slave women and their mistresses, for example, put considerable distance between women of different classes. Meantime, the propaganda system of the patriarchy told women they were inherently evil and were not to be trusted, and women came to mistrust other women, even those of same class.

The most recent sustained challenge to patriarchy occurred in second half of the twentieth century, in the late 1960s and early 1970s during a period of social change. It was led by American women activists who became enraged when the male leaders of their social action movement ridiculed women's issues. They started their own revolution within a revolution, the Women's Liberation Movement. Two slogans, " Sisterhood is Powerful" and " The Personal is

Political " struck a resonant chord with white middle class women across North America and Europe and a strong women's movement was born. For the first time in history, women came together to discuss their experiences and to develop collective strategies to eradicate oppression. The organizational efforts of women paid off and women gained unprecedented rights and freedoms during this time.

Contemporary feminist theory started with the common theme that women needed to regain control of their lives and their sexuality but solutions on how to effect political change evolved into a number of ideologies as the movement matured. As these ideologies split members of the women's movement into different camps, the movement started to lose its force. A number of women's struggles had been won by that time, however. Women had gained more control over their reproductive rights, employment standards in the workplace improved. As complacency set in, however, most women did not even notice that some of these gains were starting to slip away (Faludi, 1991).

Considering that women have had a diversity of life experience for over 5000 years, and given their history of isolation and mistrust, sustaining "sisterhood" and a cohesive liberation organization was a difficult undertaking.

Four of the authors of the history of women quoted in this thesis; Eisler, French, Miles and Lerner, do not write from specific, feminist ideological perspectives although they are distinctly women-centred. They instead call on historical evidence to make their arguments. I find this a most convincing and powerful approach. One author, Walker (1985) who supports the radical feminist view that male humans are an inherently violent and aggressive species, uses her historic evidence to support this view. Although she certainly proves that men have been and continue to be violent and aggressive, she does not provide convincing evidence that they are inherently that way.

Eisler takes a global view of gender relations, and characterizes male domination in history, as a 5000 year detour from a twenty five thousand year history of peace and partnership. In the big picture, she contrasts the present model of society -the dominator model with its win-lose value system and the prehistoric partnership societies of win-win values. She argues that all of today's political systems, including both capitalist and communist systems are androcentric and none have benefited humanity. In fact they have taken us to the brink of destruction. In order to survive we must change. We need to reconnect with our psychic roots, she says. By making the connection between

gylanic myths and symbols and modern ideas, we can move towards a better world (Eisler, 1987, p.202). Eisler believes that education is the key to change and she follows up her 1987 book with a companion guide for the study and practise of "partnership". The workbook (1990) urges readers to study new collaborative leadership styles, to rebuild personal and family relationships, to reform educational curriculum and methods, and to lobby against harmful media messages. The workbook is her curriculum for transformation.

French does not share Eisler's optimism that the androcentric system is ready for change. "The feminist vision of the world will not be realized in our lifetime, our century, or this millennium. But it still is possible, in pockets of one's life to build 'a Heaven in Hell's despair'(French, 1985, p. 488). French dismisses established feminist solutions as unworkable and claims programs and prescriptions to end androcracy will not work either. Liberal feminists end up co-opted or frustrated in male institutions, she says. The separatist philosophy of radical feminists is androcratic and dangerous, and socialist and intellectual feminists talk only to themselves, she says. She suggests that the solution lies in individual transformation. The end is the process, she

says. Women must self actualize, do what they want to do and have fun doing it. The choice, she says lies between a life lived through and a life lived (French, 1985, p. 544).

Miles echoes Eisler's conviction that the answer lies in education. In her 1988 history of women, Miles states that history is more convincing than philosophy. She believes that if men and women become aware of the symbols and stereotypes that have led them astray, they will learn the lessons that history teaches and change. Her 1991 book on men and violence is considerably more prescriptive. "We need to acknowledge that the seeds of violence are in every man, therefore their education should be devoted to training that out, not beating it in; that aggression is contagious, and that watching it taking part in it, reading about it, and expressing it will never reduce it "( Miles, 1991. p.235). Miles argues that society will change only when the approach to the way boys are educated improves, and she prescribes the basics of a new curriculum.

Lerner's analysis of history brings her to a conclusion similar to Eisler, that patriarchy is a historical construct, that had a beginning and will eventually have an end. The way out of patriarchy, according to Lerner, involves stepping outside patriarchal thought and questioning every known assumption, value and definition.

Women must focus on themselves, learn to trust their own experience, and not be afraid to stand alone and challenge the system with the same intellectual arrogance that men have, she says (Lerner, 1986, p.228). Lerner herself goes through this process and comes up with a blueprint that shows in ten steps how patriarchal structure was built and maintained. This blueprint is used to analyze history but the main themes provide a useful conceptual framework to examine patriarchal structure today. The main themes are as follows:

1. All aspects of state and religion model the patriarchal hierarchy.
2. Men are taught to dominate women and those of a lower class
3. Women's subordination is institutionalized by law.
4. Women are conveyed in the symbol and communication systems as inferior to men
5. Women are denied access to education and are excluded from public life.

These themes provide a useful checklist for investigating the degree to which patriarchy exists in society as a whole and in institutes of higher education. They are considered in analysis of sexual harassment policy and procedures later in the thesis.

Walker does not share the opinion of the other historians that education will change man's aggressive



behavior. "Men do not voluntarily relinquish their ego trips, war toys, and money games" (Walker, 1985, p.175). Men have to be forced to change. Since men were terrified by the image of the Destroying Crone, and feared the judgemental eye of the wisewoman even when she was socially powerless, women should resurrect this part of themselves. When women get angry and say no and mean it, the whole structure can collapse, she says (Walker, 1985, pp.175-176).

#### A Philosophical Framework

All five historians tell the same story of women, but their foci and the conclusions they reach yield solutions that are both the same and different. One of the main foci that the authors share is the evidence that men and women lived for thousands of years as equal partners in a society that created technology to better the quality of life. They all share the hope that this kind of society is possible again. I, too share their optimism.

While French, Miles and Walker argue that maintenance of the patriarchal system has always been in the best interests of men, Lerner and Eisler suggest otherwise. These two

authors suggest that patriarchy has really benefited just a few elite men at the top of the hierarchy. Men have certainly had more privileges than women under this system but the "dominator" society has not been kind to men, either. Men have been the primary victims of war and violence. Men have lived their lives, dominated by higher classes and by other men in the hierarchy of their social group. Competitive attitudes towards other men have denied them the pleasure of real friendship. In the past men were rewarded for their cooperation in the patriarchy by being allowed to dominate their wives and family, but this had to be an empty pleasure. The role of the male has been a straight-jacket on their personalities and has prevented men from being who they really are. Kreps puts it this way.

The Myth of Masculinity takes a terrible toll on men. Not only do they lose their autonomy in the quest "to measure up", they become more and more like automatons in the process... Psychologists have found what many of us know: that masculinity is associated among other things with being anxious, aloof, emotionally unresponsive and dull.

(Kreps, 1990, p.28)

Eisler claims that men as well as women are becoming increasingly more disillusioned with dominator values and points to the growing environmental movement, New Age spirituality and human potential movements as evidence of a new "postpatriarchal" epistemology (Eisler, 1987, p.169). Futurists Naisbitt and Aburdene (1990) echo this view as

they predict a golden age starting in the year 2000. Values such as racial tolerance, environmentalism, a love of the arts and spirituality will predominate in society, they claim, and women will be the leaders of the golden age. Business analysts Kanter (1989) and Drucker (1989) observe that large multinational corporations are starting to break down their bureaucratic and hierarchal structures and are replacing department levels with semi-autonomous divisions or satellite subcompanies. Workers formerly expected to follow orders are now expected to work creatively as members of a team. Both analysts predict that the workplace will be more woman centred and women driven. Eisler adds that other futurists such as Robert Jungk, David Loye, and John Platt also recognize the link between equality for women and a peaceful society (Eisler, 1987, p.169).

It is important to point out, however, that the signs that western society is becoming kinder and gentler were observed by these authors before the western nations declared war on Iraq and before the bloody "ethnic cleansing" massacres and the ritual rapes of Muslim women started in the former Yugoslavia. History tells us that although force was used initially to institutionalize patriarchy, its long term success was based on the internalization of patriarchal values and the complicity of

women. For that reason men must be included in the transformation process as they comprise almost half the population, and the long term success of partnership, like the success of patriarchy depends on their cooperation. Both men and women must be convinced that patriarchy no longer serves their needs and partnership offers more. On the other hand, there is great danger in advocating human liberation instead of women's liberation. As Afro-American women quickly realized during the Black revolution in the United States during the 1960s, women's issues were put on the back burner and were never dealt with during that struggle for equality. Although society's transformation must include men, women must lead in the transformation process because the values of the partnership society must reflect women's experience. As Schaefer (1985) explains, there are psycho-social differences between male and female experience, but males define the standards of what experience is and reject the reality of women's experience.

The question is, how should the transformation proceed? Miles and Eisler claim, education and awareness programs are the answer. Lerner suggests all structures and systems of thought designed by men should be challenged. Walker says women should get angry and force men to change. French says women should do what they want to do and have fun doing it.

All authors including Wolf and Faludi who describe the contemporary problems of patriarchy suggest that symbology, religion, and communication systems are powerful agents that have the tremendous influence on societal values. Symbols of hatred against women should not be tolerated, they say. These solutions deserve closer scrutiny. It is tempting for an educator or a scholar to see education as a panacea for society's ills, but is knowledge all that is necessary to change behavior? For example, a 1986 Canadian Gallup Poll reports that 82% of men say they should share in the housework, yet only 52% say they regularly share in the housework and only 42% of their wives say they do housework (Adamson et al, 1988, p.144). Adamson et al (1988) argue that a change in attitude is not enough to change a social practise, although it is an important contributor to that change. They suggest that social structural change would more effectively change behavior, but warn that forcing change by fiat would not bring about desirable change (Adamson et al, 1988, pp.144-145). Adamson et al raise a crucial point in this thesis that I will return to in the concluding chapter when solutions to the sexual harassment problem are recommended. Education, after all, is seen by both the legal system and institutions as the best way to both prevent and deal with sexual harassment, but is it?

Lerner claims that not only the social system but all structures of male thought should be challenged. There has been some change in structure of the state since it was modeled on the patriarchal family where the father had absolute power but was controlled by a feudal lord and by the king. We are no longer ruled by an absolute patriarch, and the law no longer gives the father absolute power. At the same time the law does not always punish the father when he abuses his wife and his children either. The edifices of patriarchy are still very evident in society. While business analysts note some restructuring trends, most corporations, government and educational institutions are still modeled on the hierarchical model. This kind of organizational structure has a built in hostility to women, as relationships within these structures are based on power and control over others. Other examples of male thought are cited by Schaef (1985).

In the White Male System, logic is a tool one uses to win. It does not matter if it is used with internal consistency or balance. In the Female System, logic is perceived as a clear, balanced progression in which both grace and power are possible... In the White Male System, feeling and intuitive thinking are always inferior to logical and rational thinking. (Schaef, 1985, p.132)

Schaef's observations seem particularly pertinent to the forms of knowledge or the subject areas taught in public schools, colleges and universities. Most forms of knowledge

are male constructs that require male thinking. As schools are the gatekeepers to the best occupations of society, women have to learn to think like men to gain the credentials that allow them to enter professional and technical jobs. This is one way to ensure that the women who enter the male bastions of society do not challenge the system. Once in the system, institutional checks and balances keep women in line, while sexist attitudes and harassment undermine their confidence. Educational curricula, educational methods and institutional structure and policy are not "user friendly" to women and ought to be challenged.

Walker says women should get angry and force men to change. I agree that women have a right to be angry with the terrible historical crime men have committed and continue to commit against them, but if Walker means physical force, fighting violence with violence has never been a long term solution. On the other hand, societal values and institutions that do not tolerate the supremacy of men over women can be powerful, coercive forces that motivate people to change. Anger can propel women towards effecting changes to societal values and institutions, but this energy has to be expended in the most productive way possible and communicated in ways that attract the maximum

amount of support. Political and legal decisions are often influenced by public opinion, areas where public outcry can make the difference. Faludi adds that women are not taking advantage of the power they already have. Men understand the potential of women's power, she says, but it is women who doubt themselves. Faludi claims that if women had been able to sustain the movement of the 1970s, the '80s could have become women's great leap forward. (Faludi, 1991, pp.98-100). Faludi's statement seems to validate French's observation that women need to self-actualize and become empowered.

How women were derailed from their quest for liberation in this century is the same as it has always been. They were pushed off balance by powerful, symbolic and subliminal warfare launched by the mythmakers of their time. In order to regain their balance women must become grounded in the power of their Goddess past, and then ensure the reality of their experience and the true picture of who they are is reflected back accurately in society's communication systems. Women must both challenge and correct not just sexist media messages, but also the symbols and messages conveyed in organizations where they work and study.

This chapter has examined the history of patriarchy and the structures that have held western culture in place for



several millenia. History revealed that whenever women tried to break free from oppression, the same strategies of violence, legal force, religion, economic dependency, and symbolism were used over and over again to bring them back into line. Sexual harassment, the issue addressed in this study, is one such strategy that is still in evidence in workplaces and educational institutions in this society.

The next two chapters explore the patriarchal thought evident in law and in higher education.

## CHAPTER 4

### THE LEGAL CONTEXT OF SEXUAL HARASSMENT

Litigation as a feminist activity embodies an obvious contradiction: it is in essence the telling of women's stories in a language and a setting structured to deny the relevance of women's experiences.

(Razack, 1991, p.51)

While the previous chapter identified the social and religious roots of female oppression, this chapter traces the history of women's struggle for workplace rights in Canada and the development of sexual harassment litigation in the late twentieth century. The history of women's participation in the workforce provides a context in which to place the contemporary issue of sexual harassment.

The struggle for equal rights in the workforce begins in the nineteenth century. The hardships experienced by working women are outlined, followed by a brief chronology of some of the milestone, human rights victories won by women up to present times. The development of sexual harassment as a legal issue is discussed and case law reviewed. The chapter concludes with analysis of the legal processes involved in present day sexual harassment cases.

## WORKING CONDITIONS FOR WOMEN IN THE NINETEENTH CENTURY

Prior to Confederation, only male members of the dominant British culture had any legal rights in the British North American Colonies. In fact, much like the history of the United States, relationships between different races started with slavery in the territories which later became part of Canada. In the eighteenth century the pioneer settlers of New France captured and enslaved Native people who they called Pawnees, while in Nova Scotia black slaves were brought in and sold from the time of the founding of Halifax (Tarnopolsky, 1982, p. 1).

As explained in the previous chapter, while male slaves were exploited for their labour, slave women were used for dual purposes; household or agricultural labour and the sexual and recreational pleasure of her owners. Gerda Lerner (1973, pp.149-150) writing about black women in the nineteenth century says that the availability of black women as sex objects was enshrined in tradition and after slavery was abolished the law upheld the right of white men to sexually abuse black women workers.

The Act for the Abolition of Slavery, effective for all the British Colonies was passed by the Imperial Parliament in 1833, but racism was very much in evidence in Upper and

Lower Canada. For those whose race, ethnicity or religion was disliked by the dominant culture, life was likely worse than slavery. Ethnic groups and particularly new immigrants who were unpopular with the dominant culture, endured discrimination in the workplace and constant harassment by the police and minority women suffered significantly (Backhouse, 1991, Farley, 1978).

Irish Catholic immigrants who had fled Ireland during the famines of the 1840s found themselves prosecuted by the police roughly twice as often as their numbers within the total population would warrant (Backhouse, 1991, p.229). In fact the bulk of the prison population in Ontario at that time was composed of Irish immigrants. Irish women represented over ninety percent of the female prisoners in some jurisdictions, incarcerated for crimes such as vagrancy, drunkenness or prostitution (Backhouse, 1991, p.229). The only jobs open to Irish women, particularly Irish Catholics at that time were the lowest on the job hierarchy-domestic service and prostitution and most entered the sex trade as a last resort, after being sexually and economically abused as domestic servants (Backhouse, 1991 and Backhouse & Cohen, 1978). Lin Farley, writing about women in the United States in the early nineteenth century claims that most working women experienced harassment of a

sexual nature and all working women were highly vulnerable to sexual extortion. To refuse sexual advances would result in either a decrease of wages or the job itself which was the sure road to starvation, she said. At the same time, to accept was sure damnation. If the woman's moral reputation became damaged she would never find another job or a husband and prostitution would be the only remaining option.

As a result of widespread sexual harassment, many former working women swelled the ranks of prostitutes into numbers which have never been equalled throughout American history. The phenomenon was much lamented in the press of the time. There was less sighing, however over the venereal disease that regularly killed these women within two or three years. (Farley, 1978, p.58)

Most of the women in the workforce in the mid 1800s were young and unmarried, as most married women were responsible for producing a certain amount of food and clothing at home and housework was demanding (Backhouse, 1991, p.267). Depending on their class, cultural group and level of opportunity, young women seeking employment could choose from a narrow range of careers consisting of domestic service, seamstressing, shop clerking, factory work, and nursing and teaching if they could afford the schooling. Wages for all women's occupations were set so low that working women could not support themselves, let alone any dependent children. Farley (1978, p. 49) claims that by paying women starvation wages, and by keeping them in

segregated and low skilled jobs, the capitalist patriarchy ensured that women were always dependent on a man.

For most of the nineteenth century, upon marriage, a woman forfeited the few rights she did have to her husband. She was legally subsumed by him. All personal property, including her wages were transferred absolutely to her husband. Married women were legally incapable of contracting, suing or being sued in their own names (Backhouse, 1991, p.177). Tarnopolsky (1982) points out that Ontario (then called Canada West 1841-1867) was the first province to legislate real estate ownership rights for women in 1859. By 1884, Ontario brought in the Married Women's Property Act which gave women the right to their personal earnings, allowed them property ownership and management and gave them the right to sue and be sued. Within the next few decades the rest of the provinces had enacted similar legislation (Tarnopolsky, 1982, p.5).

Working conditions during the nineteenth century were appalling (Backhouse & Cohen, 1978, Farley, 1978). Women working as store clerks were forced to remain on their feet for as long as twelve hours a day, six days a week and meal breaks were insufficient , but conditions in the shops were superior to the factories (Backhouse, 1991, p.265). Industrialization gained momentum between the 1850s and the

1880s as scores of new factories sprung up around the major centres of central and eastern Canada. A limited number of industries hired women: garment, textile, leather, and bookbinding industries, some mining operations, food canning operations and tobacco product plants. Factory women worked ten to thirteen hours a day, six days a week. They had no lunch rooms and an insufficient number of washrooms which often had to be shared with men. Lateness and mistakes were punished by deductions from their wages and wages were set at one-third to one half of what male factory workers earned for similar work. Factories were overcrowded, unventilated, dusty, and uninsulated against the extreme hot and cold temperatures of eastern Canadian weather. There were also the hazards of unsafe machines, which injured a number of workers.

In addition to the environmental and safety hazards at the factory women endured sexual exploitation in the extreme (Backhouse, 1991, p.265-268). Ore and coal mining operations thrived in Nova Scotia, Ontario and British Columbia during this period. Working conditions were harsh, dirty and dangerous. Accident rates were high and occupational hazards included deformed spines and swollen legs. It is not known how many women worked in Canadian mines, or the extent of their roles in the mining industry

but it is clear that women were involved in the industry (Backhouse, 1991, p.289).

By the late nineteenth century, politicians were feeling pressure from the public to improve the terrible working conditions of Canadian workers. Social reform groups, the Women's Christian Temperance Union and other lobbyists criticized the government for its tolerance of worker exploitation, while journalists and novelists chronicled stories of women who died early deaths from overwork and unhealthy working conditions (Backhouse, 1991). Meantime, the male trade unions which had gathered strength and numbers throughout the 1900s lobbied strenuously to get women out of the workforce. The trade unions had excluded women from the beginning and women were driven from skilled crafts and trades occupations whenever their workplace became unionized. Male workers viewed the employment of women as a threat, given that they were willing to work for lower wages (Farley, 1978, pp.50-51).

In 1880 a federal member of parliament introduced a bill calling for restrictions on child and women's labour. The bill was defeated but in 1884 Ontario enacted the Ontario Factories Act that prohibited child labour, restricted the hours of women workers to sixty hours a week, mandated adequate washroom and lunch room facilities and legislated



basic safety procedures. The legislation however, pertained only to large factories and excluded workers who likely had the greatest need of protection; agricultural labourers, domestic servants, and employees of small shops and factories. Additionally few inspectors were hired by the government to enforce the legislation, so conditions did not improve substantially for most working women (Backhouse, 1991, p.272).

By the end of the nineteenth century Quebec and Manitoba had passed similar legislation to Ontario's Factories Act, while Ontario and Manitoba introduced some limited employment standards to the retail and wholesale sectors. Maximum hours were set for children working in shops while seats had to be provided for female clerical workers (Backhouse, 1991, p.275). Meantime, in 1842, English parliament banished women and girls from underground employment in the mines, not because of safety concerns but because of the belief that mines were an immoral environment for women.

The Colonies watched this legislation with interest but did not act on it until many years later. British Columbia duplicated this British law in 1877, while Ontario waited until 1890 to bar women from the underground. Nova Scotia, whose coal mines had the worst record in North America for

safety accidents, did not bar women until the mid twentieth century (Backhouse, 1991, p. 290).

Backhouse (1991) notes that most of the employment regulations enacted in the late 1800s did little to improve working conditions for women while others such as the mining prohibition and another law passed at the same time, which prohibited women from waitressing in bars or selling newspapers were actually harmful and discriminatory. Farley (1978) adds that its important to remember that women were oppressed not only by a patriarchal government but also by working class men. The labour union movement's agenda in the nineteenth century was to drive women out of the workforce and failing that at least to keep them in unskilled, low status occupations (Farley, 1978, p.51). The legislation of the late 1800s appears to have reflected their influence.

Around the same time that other employment standards were being introduced, Canada's first bill on what would now be defined as sexual harassment protection for women workers was brought forward in 1890. What was proposed was an amendment to the Criminal Code to make it a criminal offence to seduce a female factory employee or to use the power of supervisor or employer status to destroy her virtue. The legislation pertained only to factory workers however and

required that the woman be of previous chaste character and under the age of twenty one. The penalty for conviction of this offence was two years in jail. After considerable debate, the House voted to extend the age to thirty but the senate amended the maximum age back down to twenty one (Backhouse & Cohen, 1978, pp. 69-70). Backhouse and Cohen (1978) explain that the purpose of the age limit was to exclude married women, as the male senators firmly believed that married women would not require legislative protection. These authors also suggest that the overriding fear of the male legislators was that innocent men could be framed by vengeful women, but that "girls" under the age of twenty one might be less likely to make false accusations.

This 1890 section of the criminal code was in effect until 1920 when it was amended to extend coverage to women (under twenty one) in all occupations. It should be noted that prior to this amendment to the Criminal Code in 1890, the legislature of Upper Canada had passed a bill called *The Seduction Act of 1837*, where a father could seek legal redress if his daughter had been seduced and thus "ruined" by a man who was unwilling to marry the woman. Damages arising from such law suits were awarded to the father, not the daughter. Women sexually assaulted on the job could use this law for redress, (through their fathers), but the

Seduction Act 1837 was not specifically focused on the workplace, as was the Code. The Seduction Act was in effect throughout the nineteenth century and a number of cases are documented (Backhouse, 1991).

Towards the middle of the nineteenth century, some upper and middle class women across the country started to push for equality rights. In the 1850s women were not permitted to attend universities. Individual women started to challenge this policy. Emily Stowe, Canada's first female doctor was one such woman who repeatedly applied to the University of Toronto for admission to medical school from 1850 to 1870. The university finally relented in 1870 and admitted Stowe and another woman. Both women experienced extreme harassment on a repeated and consistent basis at university, yet both women graduated. Stowe refused to be examined by the College of Physicians and Surgeons because of the hostility its members demonstrated towards her so she practised without a license. Slowly the universities across the country started to admit women, but tried to channel the few women who dared to register away from professional designations. Even so, several Canadian women broke through the gender barrier. A few women succeeded in becoming university instructors by the end of the century, although they were paid substantially less than male professors.

Canada's first female lawyer, Clara Brett Martin was finally admitted to the bar in 1897 after years of repeated applications to the Ontario Law Society which had denied women membership and thus the right to practise law (Backhouse, 1991).

Mossman, (1991, p. 288) comments that the process of the Canadian legal method that prescribes that legal decisions be based on past precedents and conservative, mainstream attitudes was largely responsible for holding back women's legal rights in the nineteenth century and continues to perpetuate discrimination against women today. She points out that the rights won by women in the nineteenth century were due in no part to the legal system but instead were legislated by elected officials. The justice system seldom interpreted the law in a way that favoured women or minorities, at that time, she says. In the nineteenth and early twentieth centuries, she claims, the courts uncritically accepted religious and philosophical mainstream ideas as facts rather than as ideas. She cites as an example, the application of Mabel French of New Brunswick, in 1905 for entitlement to practise law in that province. French's application was submitted to the Supreme Court of New Brunswick for a decision. The Court denied her claim, due to the lack of precedents for the admission of women

into law in that province. Adding insult to injury, Supreme Court Justice Barker quoted from a previous case involving a woman's property rights claim in 1873, where the judge had declared that " the paramount destiny and mission of women was that of wife and mother because this is the law of the Creator"(p.289). Mossman finds it incredible that a judge was able to rule by his religious opinion first of all and second that he would quote from a case of a previous era that preceded property rights for women and therefore was irrelevant.

Backhouse (1991, p.337) comments that had more women like Martin and French continued and sustained the challenge to the patriarchal legal system in the early twentieth century, women would likely have a better quality of life in Canada today, but this was not to be. Not until the 1970s and 1980s did gender ratios begin to alter dramatically in Canadian law schools, and not until recently have women started to confront the sexist legal structures and practises (Backhouse, 1991).

In light of the current backlash against women; the Marc Lepine murder of 14 women students and other incidents of male violence against women in "non-traditional" studies in 1990s, perhaps the reluctance of early twentieth century women to push the male establishment further can be

understood.

## TWENTIETH CENTURY BREAKTHROUGHS FOR HUMAN RIGHTS

The twentieth century marked a major change in history as women entered the workforce in record numbers. While women from the poorest classes had always worked outside the home, growing numbers of single women from middle and upper classes entered the workforce in the early part of the twentieth century (Backhouse & Cohen, 1978, p.71). In the first half of the century women were expected to leave their jobs upon marriage. In fact many employers including the federal civil service enforced this rule. Yet the shortage of workers during the two world wars made employers reconsider this policy and married women were encouraged to fill the jobs left by the soldiers on a temporary basis. As women's participation in public life increased so did the strength of women's organizations which lobbied hard for social change.

Women won the right to vote and to take public office for the first time in Canadian history during the early twentieth century. Manitoba in 1916 was the first province to allow women to vote in provincial elections. In the next six years the rest of the provinces of Canada followed suit

except Quebec which did not give women the vote until 1940. In 1917 women serving in the Armed Forces and women who had male relatives in uniform were given the right to vote in the federal election. In 1918 all female citizens over twenty one were given the federal vote. The following year women were allowed to stand for election to the House of Commons (Tarnopolsky, 1982, p.4). Yet although women were allowed to run for federal office, they were seemingly barred from holding office in the upper chamber, the Senate. In 1927, five women (at the forefront of the suffragette movement) challenged the meaning of the word "persons" in section 24 of the British North America Act. Section 24 stated that the Governor General "shall ... summon qualified Persons to the Senate". Although the language of this section was gender-neutral, no woman had ever been summoned to join the Senate (Tarnopolsky, 1982, p.17). The Supreme Court of Canada considered the meaning of the word "persons" and concluded the reference meant men. Ironically it was the Privy Council in London, then Canada's highest legal authority that ruled the following year in 1929, that women were "persons" and therefore were qualified to sit in the Senate. This was a significant judgement for women in Canada, for two major reasons. The Privy Council in handing down the decision in this case suggested that precedents



should not be the major criteria for judgement.

Their Lordships do not think it right to apply rigidly to Canada of today the decisions and reasons therefor which commended themselves, probably rightly, to those who had to apply the law in different circumstances, in different centuries to countries in different stages of development.... Their Lordships think that the appeal to Roman law and to early English decisions is not of itself a secure foundation on which to build the interpretation of the British North America Act of 1867. (Lord Sankey, 1929, quoted in Tarnopolsky, 1982, p. 18)

Both the statement by Lord Sankey that precedents should not be relied on entirely and the decision declaring women as persons represented at last, a crack in the gender barrier that had denied justice to women for centuries and it was one of the first legal decisions in Canadian history that opened the door for women to pursue the same opportunities in public life that men had.

Although the first half of the century gave women back their entitlement to personhood, the new rights to vote and stand for public office did little to improve their quality of life. Before the second half of the century there was no legislation to prevent employers from discriminating against hiring women, firing women without cause or to paying them substantially less than men for the same job, and it was not until the latter part of the twentieth century that women won the right to a work or study environment free from sexual harassment by male supervisors and colleagues.

It should be noted that Canada was a colony under British rule until 1931 when the Statute of Westminster was enacted in the United Kingdom. This Act abolished the rule that made colonial laws subject to imperial approval and empowered Canada to amend any imperial statute affecting it except the BNA Act. At Canada's request, the BNA Act could be altered only by British Parliament. The BNA Act of 1867, which stayed in effect until 1982 had no equal rights provisions for women or minority groups except for limited minority rights in education and certain French and English language rights (Tarnopolsky, 1983, in Dickinson & Mackay, 1989, p.15). With the Constitution Act of 1982 Canada finally gained complete autonomy from the United Kingdom. In writing its new constitution, this time Canada included a Charter of Rights and Freedoms which included a separate clause guaranteeing equal rights to both sexes. All the rights and freedoms outlined in the Charter "are guaranteed equally to male and female persons". (Tarnopolsky, 1983, in Dickinson & Mackay, 1989, p.15). This is not to suggest that women had no legal protection from discrimination at all before 1982.

As a reaction to the brutalities and genocide in the Fascist countries in the 1930s and 1940s, a growing number of Canadians at that time became concerned about the need

for specific measures to protect human rights (Tarnopolsky, 1983, in Dickinson & Mackay, 1989, p.16). The provinces started to include anti-racial discrimination provisions in a number of quasi-criminal statutes passed in the 1930s, but it was not until the 1950s that the provinces started to create the kind of human rights codes we have today.

In 1945, New York State invented a new way of dealing with human rights complaints and Canada watched with interest. Up to that time anti-discrimination statutes formed part of the criminal code and victims had to prove the guilt of the offender "beyond a reasonable doubt". Tarnopolsky, (1982, pp. 27-28) says it was noted at the time, that few victims of discrimination came forward as they were reluctant to bring criminal actions against employers and most would have had difficulty proving their case to criminal standards anyway. He says that judges also demonstrated reluctance to convict bigots of criminal charges. New York State created a new procedure for human rights violations. Borrowing methods used in labour relations, New York State adopted a procedure designed to educate violators rather than punish them. Discrimination complaints were assessed, an investigation launched, conciliation between the parties attempted and as a last resort sanctions were applied. The provinces eagerly copied this method and created Fair

Accommodation Practices Acts in the 1950s. The following decade these Acts were broadened to cover discrimination in employment as well and were renamed the Human Rights Codes, which remain today. Tarnopolsky (1982, pp.29-30) observes that this new method was designed to improve the defects inherent in the quasi-criminal approach, but he notes that this legislation continues to place the onus on the victim to promote human rights. The result, he remarks, is that very few complaints are made and very little enforcement is achieved. Interestingly, the Canadian Human Rights Commission itself wholeheartedly agrees with this observation. In its 1992 annual report (p.20) the commission says:

We have argued on many occasions that a purely complaints driven model is not adequate to the broad requirements of human rights law. As a result we can only deplore the fact that the Commission has not been given more explicit powers in areas of systemic discrimination such as employment or pay equity.

Protection from discrimination based on gender was not included in the early provincial Human Rights Codes. British Columbia, in 1969, became the first province to add "sex" as a prohibited ground of discrimination to its human rights legislation and the other provinces followed in the early 1970s (Tarnopolsky, 1982, p. 255). It should be pointed out that the federal government of John Diefenbaker enacted a Canadian Bill of Rights a decade earlier, in 1960,

that prohibited discrimination based on sex, but because the statute was not tied to the BNA Act, it was not binding on the provinces, and was not applied, nor was it interpreted effectively in federal court. (Tarnopolsky, 1983, in Dickinson & Mackay, 1989, p.16). Finally in 1977, the Federal government enacted a comprehensive anti-discrimination Act for employment sectors under federal jurisdiction, the Canadian Human Rights Act, and appointed a Commission to administer it (Tarnopolsky, 1982, p.31).

#### THE DEVELOPMENT OF SEXUAL HARASSMENT AS A LEGAL ISSUE

While federal legislation prohibiting sexual discrimination in employment was passed as early as 1960 in Canada, as explained in the previous section, this legislation proved to be no stronger than a government platitude at the time. A decade later the provinces finally added sex discrimination to the list of discrimination categories in their Human Rights Codes. The problem was that these Human Rights Codes did not spell out exactly what discrimination was, (except in Quebec) (Tarnopolsky, 1982, p. 83) and there was no provision in the provincial or federal human rights codes that described

"sexual harassment". Tarnopolsky (1982, pp. 108-109) notes that due to the lack of definition of "discrimination", Human Rights Tribunals in Canada applied American criteria to cases heard throughout the 1960s and 1970s. In the U.S, discrimination had to involve; evil motive or animus, differential treatment and a consequence or effects. But even with the use of these definitions as a framework for proving sexual harassment as sex discrimination, the lawyers working on the early sexual harassment cases had a difficult time convincing Human Rights Tribunals. The following section traces sexual harassment case law history in Canada and the United States.

#### SEXUAL HARASSMENT CASE LAW HISTORY

Backhouse and Cohen (1978, pp.53-56) document one of Canada's first sexual harassment cases in 1915 Toronto when a young domestic servant, Carrie Davies shot her employer Charles Massey, a wealthy and powerful man, after he sexually harassed her and attempted to rape her. Davies' lawyer had only one line of defense at her trial, that Davies was a virgin and had no other way to defend her purity. A doctor's examination verified this and Davies was

acquitted of the murder charge. Backhouse and Cohen comment that had Davies not been a virgin she would likely have been convicted of murder, in spite of the fact that Massey's unsolicited sexual advances constituted a crime against her. The authors suggest that this focus away from male action, to questions about whether women invite sexual assault and sexual harassment still characterizes modern day court cases.

After the Davies case, the next court case in Canada dealing with sexual harassment did not occur until 1980, but in the United States sexual harassment litigation started in 1974.

It should perhaps be noted that until 1976, there was no term such as sexual harassment. (See Chapter 2 for discussion on what the term sexual harassment covers according to various authors.) As Catherine MacKinnon (1979, in Eskenazi & Gallen, 1992, p.21) points out, although many women suffered the pain of sexual harassment, there was no generalized, shared or social definition that named sexual harassment so it was widely perceived that the problem did not exist. This view was evident in the decisions in some of the early American sexual harassment cases.

In the United States in the mid seventies, as in Canada,

there was legislation prohibiting discrimination against women: Title VII of the Civil Rights Act (1964), which prohibited sex discrimination in employment. In 1975, in the case of *Corne et al v. Bausch and Lomb Inc.* (390 F.Supp,161, 1975) two women employees complained under Title VII that they had been repeatedly subjected to unwanted verbal and physical sexual advances by their supervisor. Their lawyer charged that they had been discriminated against by their employer. The women lost their case. The judge stated that these acts were "nothing more than a personal proclivity ... satisfying a personal urge". He went on to suggest that sexual harassment was unavoidable unless employers hired only asexual employees (Tarnopolsky, 1982, p.269). Two more sexual harassment cases were heard that year but the decisions followed *Corne*. In 1976, there was finally a breakthrough for the argument that sexual harassment constitutes sex discrimination. In *Williams v Saxbe* the District Court in the District of Columbia found that sexual harassment amounted to disparate treatment and so was a violation of Title VII. This was the first time in North American legal history that a woman was successful in winning a sexual harassment suit against her employer. Finally, in 1980, the Equal Employment Opportunity Commission, a legal advisory agency in the United States,



issued guidelines on sexual harassment that were written into Title VII the following year.

These legal developments likely did not occur solely because the legal arguments in these sexual harassment cases were becoming more persuasive, but because the women's rights movement, which was at its height in the 1970s, and the media, gave sexual harassment sympathetic publicity. Feminist lawyer Catherine MacKinnon's academic writings arguing that sexual harassment constituted sex discrimination were also influential in changing the legal position in the United States.

As explained in Chapter two, sexual harassment in American law falls into two conceptual categories: quid pro quo sexual harassment, i.e. job related rewards or punishment in exchange for sexual favours, and hostile environment harassment where the victim is not threatened but is subjected to emotional or physical abuse. While the concept of quid pro quo harassment gained acceptance by the American courts by 1980, victims of hostile environment harassment fought an uphill battle in the U.S. until the late 1980s. For example, in 1986, a jury rejected a suit by a medical-services saleswoman who was shown a pornographic movie at a hospital meeting (Bravo & Cassidy, 1992, p.30). In *Rabidue v. Osceola Refining Co*, also that year, an administrative

assistant sued over the presence of violent and pornographic posters in her workplace and insulting references made about women by her supervisor. The court ruled against the victim, deciding that she was not the kind of person who would find such conduct unwelcome and that there was no way to restrict erotica at the workplace, seeing as it was displayed at public newsstands (Bravo & Cassidy, 1992, p.30).

Finally in June 1986, the U.S. Supreme Court upheld the concept of hostile environment harassment in *Meritor Savings Bank v. Vinson* and in 1991 a court ruled that pornography in the workplace constituted sex discrimination (Bravo & Cassidy, 1992, p. 32).

In Canada, prior to the 1981 amendments to the Ontario Human Rights Code, sexual harassment in employment was not specifically prohibited by any human rights statute in Canada. This led to considerable uncertainty and confusion throughout the 1980s as to whether or not sexual harassment had to be specified by the statute in order to be included (Aggarwal, 1987, p.10). It was not until 1989, that the Supreme Court of Canada confirmed in no uncertain terms that sexual harassment did constitute a form of sex discrimination, regardless of whether it was specified in legislation or not.

Jurisprudence on sexual harassment in Canada began four years later than it did in the United States in *Bell v. The Flaming Steer Steak House* (1980). Here two Ontario complainants claimed they were sexually harassed by their employer, and were fired when they refused his advances. In a landmark decision, the Board of Inquiry stated that sexual harassment came within the general prohibition against sex discrimination in the Ontario Human Rights Code. It concluded that the Code prohibited conduct from verbal solicitation to unwelcomed physical contact. In this case the Board did not however, find the employer liable for sexual harassment due to lack of evidence. It is interesting to note that shortly after this case, Ontario was the first jurisdiction in Canada to amend its Human Rights Code to specifically prohibit sexual harassment. Quebec, Nova Scotia, Newfoundland, New Brunswick and Manitoba followed Ontario's example within the decade. The other provinces still have no specific prohibitions against sexual harassment in their Codes, although case law has made it clear that sexual harassment is covered.

*Coutroubis v. Sklavos Printing* (1981) was the first Canadian case where the employer was found liable for sex discrimination for causing sexual harassment to his employees. Following these two important cases, new ground

was broken on the contextual aspects of sexual harassment. In *Cox v. Jagbritte Inc.* (Ontario, 1982) two complainants quit their job because of sexual harassment. The court ruled in favour of the complainants. In *Mitchell v. Traveller Inn* (Ontario, 1981) the employer asked a female employee to go to the back room with him. When she declined he advised her that if she continued to refuse she would not have a job. The complainant interpreted these remarks as having a sexual connotation and as being threatening. The Board of Inquiry found the employer liable for sexual harassment, even though there was nothing explicitly sexual about his remarks.

*Robichaud v. Brennan* was the first case on sexual harassment under the federal jurisdiction of the Canadian Human Rights Act and it turned out to be significant in several ways. Bonnie Robichaud, a federal government employee, complained to the Canadian Human Rights Commission in 1980 that her foreman made sexual advances to her and then tried to intimidate her once she rejected him. The federal human rights tribunal dismissed the case due to lack of evidence. This first decision was significant only in that it underlined the absence of any express reference to sexual harassment in the federal Act. A Review Tribunal overturned the lower court's decision in 1983 stating that

not only had Robichaud established a case of sexual harassment but that the onus was on Brennan to prove he had not sexually harassed her. The Review Tribunal found both the foreman (Brennan) and his employer, the Department of National Defense and Treasury Board, liable in this case. This was the first time in Canadian history that the employer was held responsible for the behavior of its personnel. It was also the first time that a human rights tribunal in Canada based its findings not only on the job-related consequences of sexual harassment (*quid pro quo*) but also on the "poisoned work environment" (Aggarwal, 1992, p.53). The Review Tribunal also noted that the employer was responsible for, but had failed to communicate a clearly defined policy against sexual harassment to its employees (Canadian Human Rights Commission, 1984, pp. 3-5). This decision was upheld in the Supreme Court of Canada.

In 1985, in Manitoba, a board of adjudication reviewed a case similar to Robichaud, where a supervisor was accused of sexually harassing female employees. In *Janzen v. Platy Enterprises*, however, the board discounted the Robichaud decision, on the ground that the Manitoba Human Rights Act contained no prohibition against sexual harassment. A Canadian feminist legal organization, the Women's Legal Education and Action Fund (LEAF) intervened when the case

went on to Supreme Court to protest the lower court decision. In addition to the argument that sexual harassment was not prohibited in the Manitoba Human Rights Act, the employer, Platy Enterprises, argued that his supervisor harassed two waitresses because of their individual attractiveness, not because of their sex. LEAF emphasized in its submission to the Supreme Court that merely because there was no intent to discriminate and the acts in question were not directed at all women, it did not mean that sex discrimination had not taken place. Because of the power imbalances between men and women, LEAF argued, all women are potential victims of harassment and all men potential harassers (Razack, 1991, p.108). The Supreme Court judges sided with LEAF in their decision, noting that sexual attractiveness cannot be separated from gender. It also indicated its understanding of sexual harassment as an experience women have because they are women and because they are members of a group who typically are the least compensated, least powerful employees in society. The Supreme Court added emphatically that sexual harassment is a form of sex discrimination, and that an employer must be held liable for the action of its employees (Janzen v. Platy Enterprises, 89/DRS, (SSC 1989).

Since this 1989 decision, almost every human rights

tribunal in Canada, hearing sexual harassment cases, has cited both the Robichaud and the Janzen decisions when handing down findings against employers. Since 1989 there have been no new Supreme Court decisions pertaining to sexual harassment in employment that have affected case history. There have been some significant lower and Supreme Court decisions pertaining to sexual harassment in higher education, however that are discussed in the next section.

As indicated previously, provincial human rights tribunals and the Supreme Court of Canada have been influenced by case law developments in the United States. For example Canada adopted the U.S. model for human rights complaints procedure five years after it was initiated in the U.S and accepted the concept of sexual harassment as sex discrimination several years after the U.S. Although Canadian human rights legislation is administered differently from that of the United States, decisions made on sexual harassment cases in United States have been used frequently in arguments in Canadian cases. With this in mind, some recent developments concerning sexual harassment in the United States are worth noting.

The Equal Employment Opportunity Commission (EEOC) recommended in the early 1980s, that the courts follow a common law standard of "respondeat superior" which holds

employers responsible for the wrongful acts of their employees. The U.S. courts followed this recommendation until the *Meritor Savings Bank v. Vinson* case in 1986, when the EEOC and the Justice department filed a joint brief before the Supreme Court. In this brief they argued that the employer should not be held liable for actions of supervisors in "hostile environment" cases unless it knows or has reason to know about such misconduct. Persuaded by this position, the Court ruled that employers are not always automatically liable for sexual harassment by their employees (Maschke, 1989, pp. 67-68). By contrast, since 1983, Canadian courts have upheld the standard of respondeat superior. The Janzen decision of 1989 again reinforced this principle. It is not inconceivable though that pressure from employer groups in this country who complain vigorously every time improvements in employment standards are contemplated, could convince Supreme Court judges to bring the Canadian position on employer liability more in line with the United States, especially given the pro-employer stance in labour relation cases such as *Dolphin Delivery*.

A 1991 case in the United States created a new standard of behavior that lawyers acting for women clients in both Canada and the U.S. have started to use in a variety of legal cases. It has been common practise in the courtroom



to examine behavior through the eyes of the hypothetical "reasonable person", but in 1991, in *Ellison v. Brady*, the U.S. Court of Appeals for the Ninth Circuit created a new standard: the "reasonable woman" (Bravo & Cassidy, 1992, p.31). Ellison, a government worker, was pursued by a coworker who stalked her, sent her love letters and pressured her for dates. A district court dismissed the case as trivial, but the Court of Appeals disagreed, noting that fairness demands that the law take note of women's unique perspective. The court wrote:

Conduct that many men consider unobjectionable may offend many women. Because women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior. Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser's conduct is merely a prelude to a violent sexual assault.

(Bravo & Cassidy, 1992, p.32)

In my view, this concept of "reasonable woman" is an important development in that it acknowledges that the legal system is defined by male standards, and that women's experience can differ from men's. With respect to sexual harassment cases, the concept of reasonable woman raises an interesting question. Considering that almost all sexual harassment cases are won and lost on the victim's credibility rather than any other grounds (Aggarwal, 1992, p.67). are male tribunal members really capable of understanding the meaning that a sexual harassment

experience has to a woman.

1991 proved to be a year of mixed blessings for female sexual harassment complainants in the U.S.A. Although the testimony of law professor Anita Hill against Supreme Court nominee Clarence Thomas was not believed by the Senate Judiciary Committee, Congress passed legislation strengthening several aspects of civil rights laws. Victims of discrimination up to that time (including sex discrimination) were awarded small remedies such as back pay, and lawyer's costs, but no compensation for the abuse they had suffered. The Civil Rights Act of 1991 gave victims of sex, race and religious discrimination the right to sue for both compensatory and punitive damages. Further, the law gave the right to trial by jury and juries are generally acknowledged to be more sympathetic to the victim than judges (Bravo & Cassidy, 1992, p.34). The following year, in 1992, the Supreme Court affirmed that Title IX of the Education Amendments of 1972 gave students the right to recover damages from schools and school officials for sexual harassment and other forms of sex discrimination.

By contrast in Canada, victims of sexual harassment cannot launch civil suits for damages, can claim only token amounts, up to \$10,000 at the federal level and only \$2000 in British Columbia for damaged feelings of self respect in

addition to lost wages. No punitive action (except the small monetary settlements) can be taken against employers. In Canada, human rights legislation is meant to be remedial not punitive, but the remedy can take a long time in coming. A human rights complaint in the province of British Columbia, for example, can take between six to thirty-six months to go to a tribunal although fifty percent of the cases are settled informally within the year of the complaint (Fleming P., 1992, p. 15). Post secondary students in Canada, as well as employees are covered by the provincial human rights codes, but up until the outcome of a 1993 Supreme Court decision, the extent of their coverage was unclear.

The next section looks at redress available to a victim of sexual harassment who is a student at a college or university in British Columbia.

#### HUMAN RIGHTS LEGISLATION AND HIGHER EDUCATION

As indicated so far in this thesis, sexual harassment is a developing area of human rights law that is just over one decade old in Canada. While federal and provincial Human Rights Codes now guarantee workers and students the right to

an environment free of sexual harassment, they do not stipulate that employers or post secondary institutions must have sexual harassment policies and procedures in place. None of the provincial ministries responsible for higher education and training, except Ontario, have any requirement for post secondary educational institutions to have sexual harassment policies either. The Ontario ministry responsible for post secondary education demonstrated real leadership in this regard in October 1993, when it announced a policy of zero tolerance of harassment and discrimination. Colleges and universities are being asked to review their harassment and discrimination policies to ensure they meet ministry guidelines. The Minister of Education and training will ensure that each one does. Ontario is backing up this policy with a financial allocation of 1.5 million dollars for institutions to develop and implement harassment prevention training programs.

Although the British Columbian government has made no policy commitment to prevent sexual harassment, it is still in the best legal interests of all post secondary institutions, or workplaces, to have sexual harassment policies in place. Case law has made it clear that the employer is responsible for the due care and protection of their employees' human rights in the workplace. While the

mere existence of a sexual harassment policy does not protect the employer (college or university) from liability, case history has shown that it can offset liability if the policy and procedures are functioning well (Aggarwal, 1992, pp.91-95).

Although most union employees of public colleges and universities in British Columbia have had sexual harassment protection in their union contracts for about a decade, the three universities have had sexual harassment policies only since 1987-88, while most of the colleges have had a policy for less than five years. Four B.C. colleges still have no sexual harassment policy. The purpose of overall campus sexual harassment policies and procedures is to provide due process for complaints and an avenue of redress for all members of the educational community, including students and non-union employees. College and university sexual harassment policies in British Columbia are discussed in greater depth in the following chapter.

A student suffering from sexual harassment at a college or university in British Columbia has two or three options. She/he can appeal to the institution for a remedy and the student can contact the provincial Human Rights Council. A student can also press criminal charges if the harassment is of a criminal nature, such as sexual assault. If the

student is under eighteen and had been subjected to unwanted touching, criminal charges could be considered as well.

In Canada, the only legislation that specifically names students, applies only to young persons between the ages of 14 and 18, and protects them only from persons in positions of trust or authority is section 153 of the Criminal Code that states:

- 153.(1) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who
- (a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the body of the young person, or
  - (b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years, or is guilty of an offence punishable on summary conviction.

While it is possible that university students under the age of nineteen could seek protection under this section of the Criminal Code, most university students are adults, over nineteen. For most students the only avenue for legal redress is to file a complaint with the provincial Human Rights Council, unless the sexual harassment constitutes assault or sexual assault. The section of the Human Rights Act these students would appeal to is different from the one

that employees would use pertaining to sex discrimination in the workplace. As well as prohibiting sex discrimination in the work place, all the provincial human rights acts prohibit discrimination in the delivery of services customarily available to the public. In British Columbia, for example, a student charging sexual harassment would appeal under section 3, of the B.C. Human Rights Act, that states:

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or (b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public, because of race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance. (see appendix A)

The level of protection that this section of the Human Rights Act gives to post secondary students has only recently been clarified in the Supreme Court of Canada. The question of whether an institution of higher education is indeed a service customarily available to the public or whether its services are offered only to select clients was raised in two cases in British Columbia and one in Newfoundland.

The British Columbia Institute of Technology tested this legal question in the case of *Hobson v. B.C.I.T* in 1988, when a student alleged sexual harassment by an instructor at the institute. When the B.C. Human Rights Council ruled that the institute was offering a service customarily available to the public, and section 3 applied, B.C.I.T. settled immediately with the complainant and she dropped the case.

Memorial University in Newfoundland, in 1988, tested the principle of respondeat superior after a student complained to the Human Rights Commission that she had been sexually harassed by her professor. The university argued that it should not be joined as a party to the complaint. When Human Rights Commissioner Linda Rose ruled that the university was responsible, Memorial University took her to court. In *Memorial University v. Linda Rose* (1989) Judge Wells of the Newfoundland Supreme Court ruled that the university was liable for the behavior of its professors and said that the student-professor relationship was analogous to that of employee-employer. Further he said, the fact that the alleged event did not take place on campus did not remove it from being employment related.

The next case was decided by the Supreme Court of Canada in 1993. In *Berg v. UBC*, in 1988, a graduate student



suffering from depression panicked and tried to jump through a plate glass window at the University of British Columbia. Berg was an excellent student who was good enough to be awarded a National Research Council scholarship, but after her mental illness the faculty refused to give her the rating sheet she needed to do an internship as well as a key to the building, which the other graduate students had. Berg charged that she had been discriminated against and the B.C. Human Rights Tribunal agreed. UBC appealed to the B.C. Supreme Court that the services it provides are not available to the public at large and won. The case went one step higher to the B.C. Court of Appeal which ruled that while human rights law protects members of the public who are seeking admission to the university, it does not apply to services which are only available to students already enrolled. The case was finally heard in the Supreme Court of Canada in 1993 which decided 8-1 in Berg's favour. Writing for the Supreme Court, Chief Justice Lamer said that students continue to be protected from discrimination even after they are admitted to a university or other educational institution (Berg v. University of British Columbia, (May 19, 1993), Doc 22638, 22640 (S.C.C.)).

These lower court and Supreme Court decisions appear to have cleared up a number of ambiguities surrounding the

obligation of post secondary institutions to protect students from sexual harassment and discrimination.

Other important questions that may be uncertain, however, pertain to employer liability in the larger environment. For example, post secondary institutions are increasingly offering Cooperative Education Programs where the student earns credits by working (with or without pay) for an employer in the community. Is the educational institution liable if the student is sexually harassed by an employer, it has placed her with? Or, what if a professor harasses one of his students at a private party, that is connected in no way with the educational institution? Can the institution be held accountable for the professor's actions in this context? The Newfoundland Supreme Court decision on Memorial University suggests the institution is liable in all these circumstances but the Supreme Court of Canada has yet to consider these contextual questions.

As well as filing a complaint to the Human Rights Council, a student victimized by sexual harassment can also file a complaint with the institution. Universities, unlike colleges which are governed by boards appointed by the province, derive their status either from Royal Charter or statutes passed by legislatures. Like corporations, university institutions are distinct legal entities that can

sue or be sued, just like any other private or public company operating in a province (Devine, 1987). On the other hand, the courts have traditionally treated universities differently from companies. From 1968 to 1981, thirty four student complaints against Canadian universities were taken to court. While none of these complaints were about sexual harassment, it is interesting to note the court's treatment of the university. The complaints brought before the court were in the area of academic evaluation, nonacademic discipline, and academic offences. While the courts declined to become involved in internal university, academic or disciplinary matters, they were prepared to determine whether a student had received equitable treatment under university regulations that were reasonably drawn and fairly administered. The courts used legal standards known as "Natural Justice" - that the other side be heard, and "Fairness"-that no one can be a judge in his own cause (Devine , 1987). Devine (1987) points out that since 1980, the number of students seeking redress in the courts is increasing. She warns university administrators that students could win cases that demonstrate that the university procedures are arbitrary, capricious or in bad faith.

A Vancouver lawyer with Community Legal Assistance Society

who argued the Berg case, David Mossop, claims that post secondary institutions could face a range of human rights challenges following the Supreme Court ruling in the Berg case. Students who feel they have been treated unfairly in terms of marks, courses or classrooms can now complain to the Human Rights Commission instead of having to rely solely on internal campus procedures. "This is a great victory on the road to fuller human rights", Mossop says (Bindman, Vancouver Sun, May 20, 1993 p.a7).

#### WHY IS SEXUAL HARASSMENT STILL SUCH A PERVASIVE PROBLEM IN 1993?

Although Human Rights Tribunals, courts and legislators have become increasingly more empathetic to sexual harassment victims over the past decade, the problem of sexual harassment does not appear to be going away.

Research conducted throughout the past ten years reveals that sexual harassment is still a pervasive problem in the workplace as well as all types of post secondary educational institutions (Cammaert, 1985;, Rubin & Borger, 1990). Studies focusing on the frequency of sexual harassment incidents, conducted primarily in American colleges and universities have indicated a wide range of percentages,

averaging at around 30 percent (Dzeich and Weiner, 1984, Williams, Lam & Shively, 1992).

A 1991-1992 British Columbia study conducted at a college that had no sexual harassment policies or procedures in place at the time, Okanagan University College, found that 40 percent of female students, 42 percent of female instructors, 63 percent of female administrators, and 42 percent of female support staff thought sexual harassment was a serious problem at that college. Of the respondents, thirty one percent reported that they had been subjected to discriminatory and insulting remarks and sexual jokes. Fifteen to seventeen percent of female students and instructors experienced unwanted touching. Twenty one percent of female administrators reported unwanted touching. Twenty four percent of the respondents said they did not report the incidences of sexual harassment they had suffered at the college (Okanagan University College, June 1992, Report of the Task Force on Sexual Harassment).

The literature indicates that a large number of sexual harassment victims report that both workplace and court complaint proceedings have not made things better. In the United States Merit Systems Protection Board study, 41 percent of respondents who had used the government sexual harassment grievance procedure, reported that their actions

had no effect or made things worse (Lach & Gwartney-Gibb, 1992, p. 111). In a review of sexual harassment cases heard in American federal courts between 1974 and 1989, Terpstra and Baker (1992) found that complainants were successful in only 38 percent of the cases.

In Canada and British Columbia, however, although no national or provincial studies on government Human Rights complaint procedures have ever been done it is obvious that statistically few victims ever use these procedures and considering the backlogs of caseloads it is likely that those who have lodged formal complaints have not been particularly satisfied with how their cases were treated. If one compares the statistics of the frequency of sexual harassment incidents in workplace and educational institutions generally, which is about 30 percent of the population, it is evident that the government resources allocated to deal with this problem are pitiful to say the least. If victims are fired from their jobs, they can not expect that Human Rights Tribunals will get their jobs back for them as Tribunals have almost never ordered reinstatement (Aggarwal, 1992). Monetary compensation includes wages lost only for a period of time between the old job and a new one plus damages up to \$2000 in B.C.. When one considers that the process can take more than two

years to complete in this province, it is unlikely that a harassed worker could remain on the job without relief for that long. For a victim who has been fired or has quit, the time lapse could result in faded memories or attrition of key witnesses, and over a time frame of two years, old wounds could be reopened just when the victim had started to get on with life. A victim could well find more cons than pros when considering whether or not to file a complaint.

Aggarwal (1992) questions the government's sincerity in ending human rights abuses in Canada. Human rights investigations should be dealt with in an expeditious manner and without delay, he says, but some investigations or board of inquiry proceedings in Canada can take as long as six years. These unreasonable delays are caused by a lack of resources he says, administrative bungling or a combination of both.

The situation is alarming, particularly in sexual harassment cases. There is a clear and unmistakable duty of all governments to "put their money where their mouth is". If they do not intend to give only lip service to cases of human rights (particularly to the sexual harassment-free work environment) they must allocate sufficient funds and personnel.

Aggarwal, 1992, p.81.

Aggarwal is not alone in his condemnation of Canada's treatment of women who have suffered sex discrimination. A number of studies conducted in the past couple of years have revealed that not only the human rights process but the

entire legal system discriminates against women at all levels. The Gender Equality Report commissioned by the B.C. government in 1991 and released in 1992, concluded that women do not always get fair and equitable treatment in the courtroom as a result of direct and systemic gender bias. The authors of this report made more than 300 recommendations to improve the system. A federally sponsored panel investigating violence against women in 1991 urged the government to institute a zero tolerance policy against offenders (Moore, Vancouver Sun, January 25, 1992, p.B8). Another study undertaken by federal, provincial and territorial governments on Gender Equality in the Canadian Justice System in 1992 concluded that gender inequalities are endemic in the justice system. Suki Beavers, a member of the National Association of Women and Law, along with other feminist spokespersons recently blasted the government, for repeatedly commissioning expensive studies rather than taking any decisive action.

When over half our population is not treated fairly by the legal system, our government must be held accountable. Anything less than a total commitment to reform is a refusal to accord women equality in our society. (Beavers S., Province, July 18, 1993, p.A33)

On the other hand, feminist lawyer and sexual harassment expert, Catherine MacKinnon, (1987, pp. 104-108) urges us to consider the positive outcomes of sexual harassment



litigation in American courts over the past decade.

The legal claim for sexual harassment made the events of sexual harassment illegitimate socially as well as legally for the first time. Let me know if you figure out a better way to do that... The legal claim for sexual harassment marks the first time in history, to my knowledge, that women have defined women's injuries in a law. (MacKinnon, 1987, pp. 104-105)

MacKinnon (1987, p.105) poses the question of whether a law designed from women's standpoint and administered through the male designed legal system can really do anything for women, which she answers with a qualified but limited yes. Most victims never file complaints, she says, because they are more afraid of public disclosure of the harassment than of the harassment itself. It is a fact, she says that public knowledge of sexual harassment or abuse is often worse for the abused than the abuser. To allow private information about the sexual abuse to be discovered in court, she says, requires women to be further violated in order to be permitted to seek relief for being violated. This is the law's weakness. The law is not everything she says, but it is not nothing either. When we started, there was absolutely no judicial precedent for allowing a sex discrimination suit for sexual harassment (MacKinnon, 1987, p.116).

CONCLUSION

History has shown that women have had to fight hard for social reforms, and that their collective energy has paid dividends when their efforts were sustained. As both Aggarwal (1992) and Beavers (1993) observe, progress to end gender inequity seems stalled at the moment as Canadian federal and provincial governments appear more committed to lip service than action. Razack (1991, p. 61) documenting the history of the Legal Education and Action Fund organization describes the uphill battle the organization has had with feminist litigation activities.

If you're going to build law with respect to equality, you want to build it your way. So, therefore, you flood the courts with your cases... but we have not occupied the field. Men have. We have been involved in damage control... men have been popping up all over Canada... challenging things we fought to get... maternity benefits, rape shield... Resources have gone into these intervention. (Beth Symes of LEAF in 1988)

The efforts of LEAF and other feminist lobbyists do not appear to have been futile in Canadian sexual harassment litigation, however. In spite of reports of gender bias in the Canadian legal system it should be noted that all Supreme Court rulings on sexual harassment cases over the last ten years have favoured the female complainants. After LEAF's intervention in Janzen the Supreme Court Judges declared in no uncertain terms that sexual harassment is a form of sex discrimination regardless of what is specified

in provincial Human Rights Codes and that employers are liable. This was an important victory for all female employees in Canada. It did not give women any guarantees that if they filed charges, they would be able to function in their jobs while they waited for resolution in their case or that if they were fired they would get their jobs back. It also offered no guarantees that they would be believed over their employer-harasser. The Janzen decision was an important first step though as it gave women the undeniable right to a harassment free work environment. It also sent the message to Canadian employers, that there is no legal argument absolving them of liability for sexual harassment in their workplace.

The Supreme Court judgement in Berg was a landmark decision for students at higher educational institutions across the country. Until May 19, 1993, it was unknown if students had protection under the Human Rights Act. Up to that time lower court decisions had been contradictory. Newfoundland's Supreme Court in Memorial University v. Linda Rose ruled in 1989 that sexual harassment by a professor of a student was analogous to employer-employee harassment and that the university was responsible for the behavior of its employees. This ruling suggested that students were protected by the Human Rights Act, at least in the province

of Newfoundland. When the Supreme Court of British Columbia was asked in 1988 to consider if the services of the university are customarily available to the public at large, it decided the services were not. In 1991 the B.C. Court of Appeal ruled that section 3 of the Human Rights Act applied to students applying for admission to the university but did not apply once they were admitted. These conflicting lower court decisions sent messages of confusion to students across Canada. The 1993 Supreme Court decision in Berg finally gave students human rights protection but one can not help but wonder why British Columbia and other provinces have not taken the initiative to specify rights for students in their Codes, as the United States has done, rather than allowing the courts to spend thousands of taxpayers' dollars over a period as long as five years pondering the vague language of Codes originally devised several decades ago and likely intended for other circumstances.

In my view, the new U.S. Act of 1991 and the amendment of 1992, giving women the right to sue sexual harassers for sizable financial damages, is the most effective action any government has yet taken to combat the problem. The 1991 Civil Rights Act showed immediate results as hundreds of companies scrambled to get sexual harassment policies in

place and a whole new industry of sexual harassment consultants and staff trainers sprang up over night in the United States. There is no doubt this Act caught the public's attention.

By contrast in Canada, employers and educational institutions do not appear overly concerned about sexual harassment law in this country. After all, several colleges in B.C. and likely a large number of businesses and industries know they are legally vulnerable without sexual harassment policy and procedures yet they choose not to have them. The backlog of human rights sexual harassment cases across Canada is another testament to the lack of real political interest in resolving sex discrimination.

The next chapter examines higher educations' response to gender equity and sexual harassment.

## CHAPTER 5

### THE INSTITUTIONAL RESPONSES OF BRITISH COLUMBIAN COLLEGES AND UNIVERSITIES TO THE SEXUAL HARASSMENT ISSUE

As much as we have believed Canada is a civil nation, the truth is that harassment, discrimination and abuse are experienced by many who live here. Because of a reluctance to acknowledge this reality and a failure to provide adequate resolution procedures, the pain, humiliation, anger and frustration associated with these experiences are often lived in silence....

As a society we find it difficult to acknowledge the statistics and deal with discrimination in Canada. It may be even more difficult to accept that comparable offenses take place on our college campuses. Nonetheless, we must accept that there is a problem and take steps to find a solution.

(Report on Harassment and Discrimination in Ontario Colleges of Applied Arts and Technology, Harassment Task force of the Ontario Council of Regents, May 1992, pp. 1-2)

This chapter focuses on sexual harassment in the context of higher education and more specifically on the responses of the public colleges and universities of British Columbia to sexual harassment complaints in their institutions.

The chapter first explains why the academic environment merits special attention in the study of sexual harassment. It then investigates how British Columbian colleges and universities respond to incidents of sexual harassment that occur at their institutions. In this

section the experience of those who work with sexual harassment policy at B.C. colleges and universities is presented along with their critical assessment of specific institutional procedures.

The chapter concludes with discussion of the Sexual Harassment Policy Coordinators' observations along with policy issues raised in the literature.

## THE EDUCATIONAL ENVIRONMENT

Sexual harassment occurs in all institutions of society, but the literature suggests that the characteristics of higher education environments are more conducive to sexually harassing behaviors than other such environments.

Dzeich and Weiner in their groundbreaking work, *The Lecherous Professor*, (1984. pp. 46-49) attribute the difference between educational environments and other institutional environments to a number of factors: institutional structure; a tradition of male dominance; an acceptance of eccentric behavior; ambiguous accountability and the professors' relationship of authority over students. Sexual harassment problems can persist for

extended periods of time in educational environments because the authority to deal with the offender is not always apparent, they claim. Though educational institutions are bureaucracies, the power structure is diffused and decentralized into a large number of faculties and departments, and as a result accountability is also diffused and ambiguous. Because accountability is so indirect and grievance procedures so cumbersome, few disputes are completely resolved in academe. Diffused authority, combined with prevailing attitudes in colleges and universities that what a professor does with his students is his own business, contribute to conditions that create a hostile environment for women students, Dzeich and Weiner (1984) state.

Hoffman (1986) notes that male faculty generally dominate the university while women faculty and staff occupy disadvantaged positions. Hoffman posits that the decentralized but bureaucratic organizational structures of colleges and universities make abusing and discriminating behaviors against others, possible.

Formalized status differentials, centralized control over decision making, and the rationalization and depersonalization of the workplace have functioned historically to concentrate power and resources in the hands of a few and to perpetuate alienating and undemocratic working conditions for many.

(Hoffman, 1986, p.115)



While women faculty and staff are on lower rungs of the college and university hierarchies, female students are at the bottom rung and are the most powerless members of educational community, according to Dzeich and Weiner (1984, p.52). In addition to having disadvantaged status, women students are temporary members of the college community, and lack a clear and unified voice. Colleges have tended to ignore student complaints against professors or staff, as students are there for a short period of time, while faculty and staff are permanent members of the community. Dzeich and Weiner suggest that university complaint procedures are deliberately complex and time consuming, so as to frustrate student complainants.

Sexual harassment problems are more easily resolved through attrition. The process of formal complaint wears the victim down, the issues become confused, and time erodes anger. The student transfers or graduates, and the lecherous professor feels safe and even sanctioned.

(Dziech and Weiner,  
1984, p.47-48)

Hurtado (1992, pp. 544-545) writing on racism in academe, also questions the sincerity of educational institutional efforts to eliminate discriminatory practises on campus. Hurtado points out that educational institutions have a tradition of "academic colonialism" which she defines as the imposition of dominant ideologies such as intellectual premises, concepts, and practises on

subordinate groups. Dominant group interests are served in maintaining a status quo that justifies unequal social relations, she says, and the academy defends the dominant group interests by upholding the rights of individual privilege.

As researchers point out, this concern for individual privilege is at the heart of the meritocratic ethic in higher education. It is also at the center of contention with regard to virtually every institutional response to eliminate inequalities and discriminatory practises for various groups, including affirmative action and the development of disciplinary codes to prohibit harassment. (Hurtado, 1992, p.545)

Ramazanoglu, writing from a British perspective (1987, p. 61) also comments on the notion of individual privilege. She first explains that sexual harassment in academe is caused by the structural mechanisms of patriarchy, that construct women as actual or potential threats to the academic order, and which act to subordinate women. Sexual harassment is a type of violence that takes the form of physical, verbal and vocal assaults against women, and is motivated by a desire for social control, she says. Sexual harassment is an assault by men of women, yet men turn this around to be a female assault on the rights of men.

It is seen as an unfeminine attempt to enforce one, prudishly dictated pattern of behavior on a diversity of freedom loving individuals. Those who object to the intimidation of women through sexual harassment of students, sexist jokes in staff meetings, and so on, are easily viewed as revengeful, unsexed women whose unreasoning assault is directed at men in general and

male sexuality in particular".  
(Ramazanoglu, 1987, p.66)

In terms of how well Canadian universities are dealing with complaints of sexism and sexual harassment, McIntyre's observations echo those of the American and British authors. McIntyre says that non-assaultive sexual harassment in Canadian universities is routinely permitted on the basis of the professors' right to academic freedom.

Throughout the university community, sexual harassment of women students, staff and faculty remains as endemic as in other workplaces, with the exception that non-assaultive harassment is routinely excused as a component of academic freedom of expression: I refer here, to universities' general reluctance to implement non-sexist language policies, to discipline faculty known to harass or denigrate women faculty and students or to censure sexist and pornographic campus newspapers.

(McIntyre, 1989, p.163)

Schneider (1987, p.62) argues that academic freedom, often invoked by male faculty as a defence against institutional initiatives to stop gender and sexual harassment, does not include the right to harass. Although faculty have enjoyed a long history of freedom and autonomy in their work, she says, they have also been bound by longstanding ethical standards. Intimidation, harassment, and racist and sexist attitudes in the classroom are behaviors inconsistent with ethical standards set by both educational institutions and professional associations. The academic freedom argument is completely irrelevant, she

argues.

Canadian writers, Dagg and Thompson (1988) and McIntyre (1989) suggests that male dominance in Canadian universities is perpetuated by streamlining women students into traditional female studies and by hiring women for only the lowest paid occupations within the university.

In Canada, although more than fifty percent of all students are female, traditional sex differences in educational streamlining remain, McIntyre says (1989, pp. 161-163). While women predominate in the arts, education, social sciences and humanities, men predominate in the sciences, in mathematics, most technologies, and engineering. Occupational segregation at the staff levels is extreme, McIntyre observes. Women are overwhelmingly clustered in the lowest paid clerical ranks Dagg & Thompson (1988) add. Dagg and Thompson's analysis is based on 1984-85 data collected by Statistics Canada, but if a recent census taken at the University of British Columbia (UBC) is an indication of occupational participation at other campuses in B.C. and the rest of Canada, then little has changed in almost a decade. UBC has been collecting data on members of its workforce who belong to "equity target groups" (women, aboriginals, visible minorities and the disabled) since 1990 and the most recent census result

published are from 1992. 50.3 of its workforce were women but none had upper level manager jobs. The majority of women workers were clerical staff and service workers, although about half of the semi-professional, technical and sales occupations on campus were held by women. Almost all of the trades, skilled crafts and semi skilled manual jobs were held by men as well as two thirds of the jobs in the professional categories (Kahn, Analysis of UBC's Employment Equity Census, Dec. 1992). Dagg and Thompson, looking at 1985 statistics reported that 17 percent of all faculty positions in Canada were held by women. In 1993, the percentage had risen to 20.2 percent. (CAUT Sept 1993, confirmed by phone).

In British Columbia the percentage of women faculty including sessional instructors and lecturers is the same as the national average of 20 percent. British Columbia's three largest universities have had employment equity hiring policies in place since the late 1980s and it appears that the policies may be having some effect. For example, at Simon Fraser University (SFU) in 1988, 14.4 percent of tenured or tenure track faculty members were women. In 1993, 19 percent of those at SFU with tenure or on tenure track are women, while the total number of women faculty represent 21 percent of the faculty. At

University of Victoria (UVic), the number of female faculty members and those on tenure track is at now at 23 percent, which also represents a substantial increase since 1988. There are now three women deans out of thirteen at UVic which represents 23 percent. At the University of British Columbia (UBC), 20.2 percent of assistant professors, associate professors and full professors are women and four out of twelve deans are female (33 percent). (Interviews over the phone of Equity Officers at UBC and SFU and from V.P. Academic office at UVic, Sept. 1993).

While these statistics suggest a slight improvement in the status of women at B.C. universities within the last few years, it seems apparent that women have made only small gains at the faculty levels and that the university is still largely a male controlled environment. Nancy Pollak of the Vancouver Status Of Women (Vancouver Sun, Dec 5, 1991, P.A7) comments that the power imbalance between men and women at the university along with the sexist nature of much of the curriculum itself, perpetuates both a hostile environment for women on campus and sexist values in society. The message is that the university considers women inferior and insignificant, she says. " What needs to be considered are some of the built-in ingredients that encourage violence against women and disrespect for women at the university

level", Pollak says.

The observations of the authors cited so far in this chapter have an eerie similarity to those made by historians in Chapter 3, who described how patriarchy was maintained for over five millennia. The main themes presented by Lerner (1986) in her analysis of the historical suppression of women are repeated as follows: 1. All aspects of the state model the patriarchal hierarchy. 2. Men are taught to dominate women. 3. Women's subordination is institutionalized by law. 4. Women are conveyed in the symbol and communication systems as inferior to men. 5. Women are denied access to education.

Each one of these aspects of patriarchy is identified by the authors. Several of the authors make the claim that the institutional structure of universities perpetuates male privilege and discrimination against women (theme 1). McIntyre and Pollak point to educational streaming, sexist language and curriculum and failure to discipline men who sexually harass or abuse women (themes 5, 4, 2 and 3). Lerner points out that the structures of patriarchy are still very evident in society today. The observations of the authors of academic life provide this evidence.

## SEXUAL HARASSMENT CASES AT CANADIAN UNIVERSITIES AND COLLEGES

It is impossible to analyze exactly how Canadian universities and colleges are dealing with sexual harassment incidents, as complaints are always dealt with in a confidential manner and records are not released to the public. Some institutions with harassment offices release annual reports that indicate the numbers of complaints that were taken, the numbers of complaints resolved and the general nature of the complaints that were made. The reports almost never provide insight into the cases themselves and how the institution dealt with these case. The only way the public at large learns about sexual harassment at colleges and universities is through news media reports. It is highly doubtful that the media reports are representative of the variety of sexual harassment complaints the institution deals with as such stories occur infrequently. Of the cases that were reported in the last three years however a certain element was common in each. The victims or their representatives were most unhappy with the way the institution handled the complaints. These reports may not be representative of the way the specific institutions mentioned deal with all sexual harassment cases, but these case studies do provide some insight into



the complaint procedure systems of institutional bureaucracies. The stories also appear to validate some of the charges made by McIntyre and Dzeich and Weiner that universities favour faculty over students in sexual harassment disputes.

For example, the charge that universities are reluctant to discipline faculty who have sexually harassed women on campus does seem apt in a case reported by the Vancouver Sun (Dec. 7, 1991, p.A4) which took place at the University of British Columbia. The Vancouver Sun reported that in early spring of 1991, commerce professor William Stanbury was ordered by the university to refrain from any direct contact with commerce department office staff after an investigation of charges that he had repeatedly harassed, intimidated and insulted women employees in that office. The union representing the women, CUPE, claimed the professor did not adhere to the restrictions and charged him again on November 22, 1991 with continued harassment of women workers and with breach of restrictions imposed by the university. On that date, the university responded by reprimanding Stanbury a second time but then lifted the restrictions retroactively in early December. On December 6, 1991 the union staged a demonstration in the centre of the university campus, calling on the president to

fire Professor Stanbury. The university administration responded by accusing the union of "bad taste" in holding the demonstration on the anniversary of the Ecole Polytechnique slaughter in Montreal.

Another recent example where the administration was reluctant to take disciplinary action in a sexual harassment case, took place in the fall of 1991 at Vancouver Community College, (VCC) in British Columbia. This was not a case of faculty/student harassment, but peer harassment where two male students harassed a woman student. Two male students who worked with the college newspaper published an ad that was a thinly disguised rape threat against the woman student, Kim Jarzebiak. This followed an anonymous article she had written in the previous issue of the paper that described a personal rape experience. After the ad was published, Jarzebiak was deluged with obscene phone calls, and continuous harassment from other male students at the college. After Jarzebiak complained, the principal asked the men who wrote the ad to apologize and attend mandatory counselling. One of the men refused to apologize but did attend the counselling sessions. The other refused to comply with any of the disciplinary requirements. Initially the principal took no action against these students, but finally in April 1992 after a series of student

demonstrations at the college and interventions from the B.C. Minister of Advanced Education, he suspended one student for two weeks. Meantime, Jarzebiak had quit school in December 1991, stating that the harassment had become much worse since she had lodged her complaint, and she could stand it no longer. Her departure was, however, far from quiet.

From the beginning of her fight with the college, Jarzebiak contacted the media and the ongoing developments of the story were published in the local newspapers. When she left the college a number of student supporters rallied to her cause, with petitions to the principal, phone calls to the Minister of Advanced Education and culminated with sit-in demonstrations in the principal's office in early March. Shortly after, the provincial Ombudsman's office became involved in an investigation into the procedures used by the college in this complaint. The principal resigned quietly early that summer, just before the findings of the Ombudsman's investigation were made public. The Ombudsman report of July 1992, concluded "that the college handled this complaint in a manner that was so ineffective, that every individual who had contact with the process was damaged in some way, particularly the complainant" (B.C. Ombudsman, Public Report 29, July, 1992, p.20). The college

has since implemented a new sexual harassment policy and procedures and has hired a half time sexual harassment coordinator. Jarzebiak, who filed a complaint with the B.C. Human Rights council in April 1992 is still awaiting its decision.

(sources - Province, Gordon Clark, Oct. 13,1991, A33, Vancouver Sun, Kim Bolen, Nov. 28,1991 B3, Dec. 5,1991, A9, Dec. 6,1991, B3, Dec. 12,1991, B5, Jan 4, 1992, B3, July 25, 1992,B5, B.C. Ombudsman, Report 29, July 1992)

In the first stages of the Jarzebiak case, and in the final stages of the Stanbury case, the media asked the B.C. Minister of Advanced Education, (the ministry responsible for colleges and universities) Tom Perry to comment on the highly publicized sexual harassment incidents at B.C. institutions and on the level of violence directed at women in higher education. Perry commented that the general public might be ahead of institutes of higher learning in recognizing the specific problems women face.

"I think the public is perhaps ahead of universities and colleges in recognizing that women are particularly vulnerable". (Tom Perry, B.C. Minister of Advanced Education Vancouver Sun, Dec. 5, 1991, p.A9)

This comment from the Minister of Advanced Education is interesting, in that he failed to initiate any directives to the colleges and universities aimed at protecting women from sexual harassment and violence during his three

year term as Minister of Advanced Education. As well he failed to fulfill a promise made to Capilano College union representatives at a meeting of the Canadian Association Against Sexual Harassment in Higher Education in November 1992 in Victoria. The union representatives asked him if he would send a memorandum to the colleges and the universities asking them to not to cut funding to sexual harassment prevention programs. Perry agreed, but did not follow through (personal observation).

British Columbian educational institutions were not the only ones in the media spotlight in the last three years with respect to issues involving violence against women.

On October 1992 500 faculty, staff and students held a demonstration at the University of PEI to protest the way that university had dealt with an incident of rape and beating of an 18 year old student. The Ubyyssey (October 6, 1992, p.1) reports that a woman student had been abducted from a residence party by male students, that her wrists were bound, and that she was raped and beaten so badly she had to be hospitalized. The protesters claimed the university did not contact police until the victim's mother went public six days after the incident to complain about the university's lack of action. The protesters also accused the university of trying to cover up

the case.

Another incident involving the rape of a female student by a male student at the University of Toronto, reported by Chatelaine magazine (Fillion, August 1991, pp. 33-78) met with a similarly indifferent response by that university. When the woman student approached her dean to report the incident, the dean informed her that another woman had tried to bring a sexual harassment complaint against the same male student the previous year, but the complaint was dismissed for lack of evidence. The dean went on to warn her that she could face the possibility of slander charges if she pursued her complaint. The student concluded that the university did not want adverse publicity during its fund-raising campaign with alumni. Fillion, (1991, p.78) quotes an anonymous official from another university in Ontario who concurs with this student, and suggests that his university would deal no differently with her complaint than the University of Toronto did. " This university is more interested in protecting its own reputation than in protecting students. Most of the top administrators are men, and they don't understand what its like to feel vulnerable and often don't believe a woman who says she has been assaulted". Fillion cites other examples of university administration tolerance of sexual harassment of female

students at McMaster University and Queens University.

Dzeich and Weiner's observation that some institutions attempt to resolve sexual harassment complaints by wearing the victims down through lengthy and complex investigations appears relevant in a story reported by Canadian Press that took place at Carleton University in Ottawa, in July 1992. At that time several students from the school of architecture filed complaints to the university president that professors were harassing women students and abusing their power. In one case a pornographic film was shown in class, and in another an instructor was accused of verbally abusing women students and pouring a drink over one woman's head. The president asked a committee of five faculty members to investigate the complaints. Canadian Press reported on Dec. 24, 1992 the president's announcement that initial findings of the committee indicated that a full inquiry into the behavior of faculty in the department of architecture was necessary, (Vancouver Sun, Dec. 24, 1992, p.E6). This announcement came five months after the original complaints were made but still no decision had been made on the behavior of the accused professors, and no action had been taken to stop the harassment of women students. The article did not describe how the victims coped in this hostile environment during the lengthy

inquiries.

These cases are just a sampling of sexual harassment incidents in Canadian institutions of higher education reported in the media during 1991 and 1992. It is unknown just how many incidents of sexual harassment actually occurred in Canadian colleges and universities as most victims do not report harassment and many institutions do not compile complaint statistics or release such information to the public.

Significantly, it was not private companies that grabbed news headlines on sexual harassment issues in 1991 and 1992. The majority of the sexual harassment stories reported by the media during this period took place in the American and Canadian military and in institutions of higher education in Canada and in the United States. This is not to suggest that sexual harassment incidents did not occur in the private sector or even that sexual harassment was more prevalent in the military and academe than in other institutions. It can be suggested, however, that the military and academe may have done a worse job in dealing with incidents of sexual harassment than private sector institutions. It also seems apparent according to the nature of the stories of sexual harassment reported in the media, and according to the literature on sexual harassment



that educational institutions lag behind others in providing a healthy working environment for women members of their communities.

Kanter (1989) and Drucker (1989) observe (Chapter 3) the private sector was forced to make profound structural changes throughout the 1980s and into the 1990s, in order to stay competitive in the market place. Hierarchies were flattened, and companies became more responsive to the needs of valuable women workers through flex-time work schedules, home based offices and day care arrangements in some offices. Throughout this period of change in society however, colleges and universities remained largely unchanged. Unlike other public institutions, the university has always enjoyed privileged and autonomous status in society. Although funded from the public purse, few governments have ever challenged their structures, their expenditures or their treatment of women. There are indications that educational institutions are starting to feel the same kind of external pressures as other institutions. In the hard economic times of the 1990s universities are unable to operate as they have in the past with tax dollars from the government and increasingly are having to raise funds on their own. Like any large corporation, public image is becoming increasingly more

relevant in the competition for corporate and alumni donations. Most colleges and universities know the public expects policy and procedures on sexual harassment, and accordingly have put such policies into place. But as the case studies suggest, traditional patriarchal structures and attitudes of those in power in some institutions may undermine effective process in the carrying out of sexual harassment complaint procedures.

Ironically, in each of the cases outlined in the newspaper reports the educational institutions suffered far greater blows to their reputation by trying to suppress complaints than if they had dealt with each issue, promptly, decisively and justly. For example, UBC made newspaper headlines in 1991 when some male students in residence made violent and sexually harassing threats to female students in residence. UBC wasted no time in suspending each of the offenders while announcing to the public that sexual harassment would not be tolerated. UBC also gained some favourable publicity on an innovative sexual harassment education program it implemented at that time. Yet much of this positive publicity was undone the following year in the report on how the UBC administration had dealt with one of its professors who continued to harass office staff. An institution's loss of reputation is by no means the only negative outcome of

its lack of action in sexual harassment cases. In Vancouver Community College incident, the victim suffered severe emotional distress and quit school while the president lost his job. In the PEI and Ontario cases, the victims' physical and emotional trauma over by the rape incidents was greatly exacerbated by the universities' calloused lack of concern. In the PEI incident, 500 members of the university community demonstrated their disappointment with and their loss of respect for the administration. It may take the administration a long time to win back community trust.

The following section examines the sexual harassment prevention policies and procedures that the colleges and universities of British Columbia have in place and considers the different institutional approaches to policy enforcement.

#### THE RESPONSE OF COLLEGES AND UNIVERSITIES IN BRITISH COLUMBIA TO SEXUAL HARASSMENT

##### Methodology Of The Examination of The B.C. Response of Post Secondary Institutions to the Sexual Harassment Issue

As indicated in Chapter 1, this thesis explores both historic and contemporary manifestations of sexual harassment. A review of women's participation in public life through the work of historians and legal theorists in

the previous chapters has provided the background and the framework for which the contemporary sexual harassment problem in academe can now be considered. The method used so far has been conceptual analysis of the literature, but due to the fact that sexual harassment is still a developing area of study, there is insufficient literature available to analyze sexual harassment policies in higher education. In order to try to answer the questions, are sexual harassment policies and procedures actually preventing sexual harassment in academe, and do they offer women protection from sexual harassment on campus, I decided to interview those who work with sexual harassment victims and ask them how they feel about their policies.

In September 1992, I wrote to the 22 public post secondary institutions in British Columbia, requesting a copy of the policy used to deal with sexual harassment complaints and asking if I could meet with a college/university representative for an interview at an annual conference of Sexual Harassment Coordinators scheduled in November. Perhaps I should note that the term "Sexual Harassment Policy Coordinator" is the title that most of those who handle sexual harassment complaints use, although some are referred to as Advisors, rather than Coordinators. For simplicity, I will use the term Coordinator to refer

to those who work with sexual harassment victims and handle complaints.

As I explained in my letter, my objective was to compare and contrast the differences among college and university sexual harassment policies and document which aspects the Sexual Harassment Coordinators (or representatives) found most and least useful in the successful resolutions of complaints. A significant body of literature has recently appeared on how to design and implement sexual harassment policies. This literature is written by human resource specialists and is drawn largely from theoretical sources in business management. Very little has been written on the design of sexual harassment policies for educational institutions. The purpose of my study was to gather the opinions of those who work directly with sexual harassment policy in post secondary institutions in B.C. in order to provide new insight into sexual harassment policy design for post secondary institutions.

#### The Initial Outcome of the Letters Sent

I received nineteen replies from the twenty two letters sent. Three institutions, Pacific Marine Training Institute (PMTI), Vancouver Community College (VCC) and Selkirk College did not reply. On follow-up I learned that

PMTI had no sexual harassment policy, and VCC had a policy but the college was on strike. I was able to get a copy of VCC's policy from another source. Selkirk College did not respond to a second letter.

Of the replies, two institutions, Open Learning Agency and Northern Lights College said they had no sexual harassment policies other than articles in employee union agreements. Two institutions, Northwest Community College and East Kootenay College indicated they were working towards a policy. North Island College, Okanagan University College were drafting their first sexual harassment policies while Camosun College and the University of British Columbia were revising old policies and going through approval procedures. Twelve institutions, British Columbia Institute of Technology, Douglas College, Capilano College, College of the Cariboc, College of New Caledonia, Douglas College, Emily Carr College, Fraser Valley College, Kwantlen College, Malaspina College, Simon Fraser University, University of Victoria sent copies of policies that were currently in effect. Of these, Douglas College and Malaspina College had implemented new policies and procedures less than six months previously.

Sexual Harassment Policies at B.C. Post Secondary  
Institutions as of November 1992.

Universities	Policy and Procedures
Simon Fraser University	Harassment Policy 1988 amended 1990
University of British Columbia	In draft form since 1987 - not yet approved by Board of Governors- interim procedures in effect
University of Victoria	Implemented 1987 amended 1991
<u>Provincial Institutes:</u>	
British Columbia Institute of Technology	In place since 1990 under review - 1992
Emily Carr College of Art and Design	Sexual harassment policy as section of Professional Relationships policy 1990
Open Learning Agency	No policy
Pacific Marine Training Institute	No policy
<u>Community Colleges:</u>	
Camosun College	Policy implemented in 1987, however new policy in development & interim procedures are in effect
Capilano College	Implemented 1991
Cariboc College	Implemented 1989

College of New Caledonia	Harassment policy 1987 revised 1990
Douglas College	Implemented 1992
East Kootenay College	Policy in draft stage
Fraser Valley College	Implemented 1991
Kwantlen College	Implemented 1987 revised 1992
Malaspina College	Implemented 1988 new policy 1992
North Island College	Draft stage of first policy in 1992
Northern Lights College	No Policy
Northwest Community College	Working towards first draft
Okanagan College	Policy statement only -1992- procedures have not been worked out
Selkirk College	Unknown
Vancouver Community College	Harassment policy 1991 revised 1992

As the above tables show, very few of the institutions have had sexual harassment policies in effect for more than a few years. Only seven B.C. institutions have had sexual harassment policies in place since the late 1980s. Nine of the twenty two post secondary institutions in B.C.



do not have a sexual harassment policy in place at present, and of these only three have interim procedures to deal with complaints. The other five colleges (Selkirk is not accounted for) have put sexual harassment policies into effect only in the last two years and have little experience to draw from in evaluating their effectiveness.

The limited experience in British Columbia with sexual harassment policies was the first obvious set back of my intended study. But other problems became apparent as well. Of the seven institutions with policies in effect for several years, one -the College of New Caledonia was not available for an interview and Malaspina College had just appointed a new Coordinator to administer a new policy. No one was available to discuss Malaspina's previous policy. It became apparent that policy evaluation from only 5 institutions would constitute a very limited study. On the other hand the response from my contact with the colleges and universities was most heartening. Representatives from fourteen institutes both with and without policies in effect, indicated a willingness to discuss sexual harassment issues at their institution.

It then occurred to me that a broader focus - an examination of how B.C. higher educational institutions are dealing with sexual harassment on campus would achieve the

same objective that the original policy evaluation approach would have done. This more general focus would include an examination of the policies and procedures the institutions have implemented, would reflect the experience of those who work with these policies and would include interviews with representatives of educational institutions that do not currently have a sexual harassment policy in effect. My research questions, do these policies prevent sexual harassment, do they improve the campus environment for women and which procedures are most and least useful, could likely be determined from the information gathered.

I considered the methods I would use to conduct this research. One of the main aims of the research was to record the experience and feelings of those working in the sexual harassment prevention field. I considered distributing an opinion survey that would ask coordinators to evaluate aspects of their policy and their job, but rejected this method as both risky and inappropriate for the following reasons: a printed questionnaire was too impersonal, it could miss important issues arising from the respondent's experience, respondents may not cooperate because the survey took time to complete, I had no control over who was filling out the survey form, respondents might not trust the offer of anonymity given in the survey and be

unwilling to be critical of their employer. The only method suitable for this research I realized was one where I first established a relationship of trust with respondents and then invited them to raise issues relevant to their work and professional life. As I planned to conduct interviews that focused primarily on the experience of the respondents, rather than on a set of specific agenda items, qualitative research methods, broadly conceived, were most suitable for this study.

The new focus and format for my research proved to be workable. I received 15 sexual harassment policies, several of which were still in draft format and not yet officially in effect at the institutions (see table above). These policies provide the data for policy comparison and analysis. I was able to interview representatives from twelve institutions, most of whom are assigned by the institution to work with sexual harassment complaints but some who are not. For a different perspective, I approached student and union activists (with no formal role in their institution's sexual harassment policies) for their evaluation of their institution's sexual harassment policy.

I also spoke with faculty and staff at four institutions that do not presently have a policy. Contact was made with most of my sources at the annual Conference on

Sexual Harassment in Victoria, but some were interviewed at other times and places. More than fifty percent of those I interviewed however, requested anonymity in any published disclosure of their comments, as they feared reprisals from the institution. For that reason, I decided to give anonymity to all the respondents of this study, and have not linked the statements made by Sexual Harassment Coordinators and other stakeholders to specific institutions. The sexual harassment policies and procedures of the institutions on the other hand, are a matter of public record so identification and analysis of aspects of specific policies was possible.

#### The General Characteristics of the Sexual Harassment Policies

First, it must be noted that there are no directives from the B.C Ministry of Advanced Education that require post secondary institutions to implement sexual harassment policies and procedures, nor has the Ministry set any standards or guidelines for the content and format of such policies. In fact, no provincial law states that colleges and universities or even workplaces must have policies and procedures to prevent sexual harassment, however case law has determined that employers and educational institutions

can be held liable for failure to provide work/study environments safe from sexual harassment. For that reason, most institutions have implemented sexual harassment policies to protect themselves from legal ramifications arising from allegations in court that their institution did not follow due process in the resolution of complaints, and to attempt to keep incidents of conflict inside the institution, in order to avoid adverse media publicity arising from public court proceedings.

Given that no guidelines for policy on sexual harassment exist, it is perhaps surprising, that the formats of the policies of the post secondary educational institutions in British Columbia look similar.

The policy statement comprises the first section of the policy. The procedure for how the institution will deal with complaints of sexual harassment, generally follows. The policies then outline the roles and responsibilities of those designated to deal with sexual harassment complaints which all include a program by the institution to prevent sexual harassment through publicity or education initiatives.

The policy statements of the B.C. post secondary institutions are worded along these lines:

1. Statement of Principle

All policies state that sexual harassment will not

be tolerated and is a serious offence. All policies statements except four-Emily Carr, New Caledonia, Camosun and BCIT indicate that disciplinary measures can/will be taken against offenders. A range of disciplinary measures are outlined in all but five policies; Emily Carr, New Caledonia, Capilano, Camosun and BCIT.

## 2. Definition

All policies state that sexual harassment is discriminatory in nature and all except Emily Carr provide examples of sexually harassing behavior.

While some of the policy statements acknowledge that sexual harassment can be an abuse of power that one person holds over another and that sexual harassment has the effect of demeaning, intimidating or threatening another person, none of the policies identify the problem as a form of violence practised by men to exercise control over women, which is how it is explained in the literature. The policies are all worded in gender neutral language, which implies that men are just as likely to be sexually harassed as women, despite extensive research conducted throughout the last decade that provides evidence that women are the primary victims of sexual harassment.

The content of the complaint procedures that follow, differs from institution to institution although most use a three step complaint resolution process: informal resolution, mediation and formal investigation.

Typically, in the informal resolution process, a sexual harassment coordinator or college representative assists

the complainant in attempting to resolve the problem informally. This could include assisting the complainant to write a letter to the alleged harasser, or a visit by the coordinator to the alleged harasser to discuss the complainant's allegation. If the respondent agrees to stop the offending behavior, then the case is considered closed. In some institutions, no records are kept of informal interventions, in others records are kept only in the coordinator's office, but are not put on either the complainant or respondent's personnel files. Some institutions file records of the complaint on both the respondent and the complainant's file or just on the respondent's file. Most complaints of sexual harassment in post secondary institutions are resolved at this first stage.

Mediation is considered an informal process, that allows both complainant and respondent to resolve the problem by themselves, with the assistance of a third party - a mediator. Some institutions recommend mediation as the second of three possible steps in the resolution process, while others consider mediation appropriate only if the complainant strongly favors this option.

Formal resolution is a process that generally follows the format of the formal grievance procedure used by the

institution. It is used when informal resolution has been unsuccessful or if the complainant chooses to bypass the informal process. The complainant outlines her/his complaint in writing along with other evidence in support of the claim. The respondent is invited to respond to the complainant's allegation. The institution appoints investigators to interview witness and gather further evidence. A committee appointed by the institution, then decides on the case and makes recommendations to a senior administrative officer who then takes action. At some institutions, a hearing is held where both respondent and complainant accompanied by second parties or lawyers answer questions pertaining to the allegations. The institution's sexual harassment committee or designates hear the evidence, make a judgement and recommend what action should or should not be taken in the case. A senior administrative officer then decides on the case. The president or the principal of the institution ensures that any disciplinary action decided in the case is carried out and also hears appeals of the decision. The role and involvement of the top administrative officer (the president) varies from institution to institution. At the smaller institutions he/she is sometimes involved immediately after informal resolutions break down. It is important to note that the onus of proof



always rests on the complainant and the standard of proof is on the balance of probabilities in all the formal sexual harassment complaint procedures in B.C. institutions.

#### Specific Characteristics of B.C. Post Secondary Sexual Harassment Policies

Not all the institutions use all three steps identified above. BCIT's procedures involve only two steps- mediation and formal hearing. BCIT has no informal resolution process, though its Sexual Harassment Committee is working on one. Four institutions do not use the mediation process: Simon Fraser University (although it is written into the policy as an option) Cariboo College, Emily Carr and Kwantlen where mediation is not offered as an option. Camosun College reports that mediation is seldom used. In all of the policies that include mediation as a process for complaint resolution, it is emphasized that mediation is undertaken only with the consent of both parties.

Most of the institutions' complaint procedures are "complainant driven" (action is initiated only by the request of the complainant). At only one institution - Malaspina College, the college will pursue an investigation of sexual harassment without the complainant's consent if the Sexual Harassment Coordinator has reason to believe that

members of the college community are at risk. At VCC and the University of Victoria informal complaints may be initiated by a third party but investigation will not proceed without the consent of the person(s) alleged to have been harassed.

Six of the post secondary institutions in B.C. require a complainant to put their complaint in writing prior to any informal intervention on the institution's part (such as a college representative approaching an alleged harasser to attempt informal resolution of a sexual harassment complaint). These institutions are; Camosun, Capilano, Douglas, Malaspina, UBC, and VCC, although it should be noted that Malaspina College allows the Coordinator discretionary power to waive this requirement if she feels it is warranted. The rest of the post secondary institutions that have sexual harassment policies do not require a written complaint at the informal stage. All institutional policies however, require complaints in writing for any second and third level procedures such as mediation or formal hearing.

The initial step of the complaint procedure is identical in all the sexual harassment policies. The complainant is to approach a designated person or one of several persons on campus to discuss the problem. This designated person advises the complainant as to whether her/his problem can be

dealt with under the institution's sexual harassment policy and outlines options available for redress and support within and outside the institution. All the policies emphasize that that complaints are dealt with in complete confidence.

The next step varies among the policies. At nine of the institutions, the complainant is counselled to go back to the harasser and ask him/her to stop the behavior. These institutions are Cariboo College, BCIT, Emily Carr, Capilano College, New Caledonia, North Island, Malaspina, Camosun, VCC. After the complainant confronts the harasser and the harassment still continues, the designated harassment policy coordinator then agrees (with the complainant's consent) to attempt an informal resolution with the alleged harasser. All nine policies suggest however that in some circumstances, the complainant may not be required to confront the harasser. By contrast at the other six institutions, including the three universities and Kwantlen, Douglas and Fraser Valley College the designated harassment coordinator offers to approach the alleged harasser immediately, with no requirement that the complainant confronts him/her first.

Only four of the policies offer "Interim Action" to victims while either the informal or formal stages of the

complaint process are underway. SFU, Malaspina, Douglas, and Fraser Valley College can direct that no contact be made between the parties until the dispute is resolved or arrangements can be made for a transfer of the complainant or the respondent to other classes or workplaces during the dispute resolution process. Interim Action may occur in case by case situations at the other institutions, but it is not written into their policies.

The mediation process is the same at each institution that uses this step. The two parties attempt to resolve the problem between themselves with the assistance of a mediator. No disciplinary action can result from this process, and all evidence disclosed during the mediation process is confidential and cannot be used at a later time in a formal hearing. The qualifications of the "mediator" varies considerably from institution to institution, however. Only one policy- BCIT's calls for a professional mediator to be called in from the private sector. Malaspina and VCC's Sexual Harassment Advisors select a mediator from outside the college, but neither policy states that the mediator must have appropriate qualifications. The College of New Caledonia uses college counsellors as mediators. Douglas College and Fraser Valley College allows the respondent and complainant to choose any mutually agreed

upon party as mediator. Capilano College and UVic's policies do not specify the identity or qualifications of the mediator. The rest of the policies indicate that mediators are regular employees of the institution who have been selected by a senior administrative officer to mediate when called upon. Only three of the policies, North Island College, Camosun and U.B.C. indicate that training is provided to volunteers who act as mediators, though the duration and complexity of the training is not specified. This topic is explored further, later in the chapter.

The formal process can be involved and complex, particularly at the universities where a number of collective agreements with faculty and staff, spell out different and sometimes conflicting procedures for the imposition of discipline. For example, UBC's (draft) sexual harassment policy outlines a process of investigation and a formal hearing. First a team of investigators selected from a Sexual Harassment Committee is appointed by a senior administrator. These investigators determine if there is enough evidence to warrant a formal hearing. If so, then a formal hearing committee comprised of three persons drawn from a hearing panel which is part of the President's Permanent Advisory Committee are selected by the President to hear the case. At least one person on the hearing

committee is a non member of the university. The hearing committee then hears the cases made by the parties and recommends (if appropriate) disciplinary measures. This sounds straight forward enough, but the sexual harassment policy does not supercede existing collective agreements. A statement in UBC's (draft) policy suggests that the policy may have no clout at all " 2.02 The procedures for the imposition of discipline are inapplicable to the extent that they may be incompatible with any express provisions to the contrary in existing agreements between the University and its faculty or staff" ( UBC President's Ad Hoc Advisory Committee on Sexual Harassment Proposed Revisions Final Report, Feb. 1991). The policies of SFU and UVic also indicate that procedures may be modified by the terms of existing University employment policies and collective agreements. The conflict between sexual harassment complaint procedures and collective agreements has been a major obstacle to the imposition of discipline at some of the institutions. This is discussed later in this study by those interviewed.

At the colleges, formal procedures are somewhat less complex, and conflicts with other contractual agreements are less of a factor. For example, at Emily Carr College, when informal resolution procedures fail, the

president investigates and decides the case. At Kwantlen College, a senior administrator (not the president) is in charge when formal processes begin. This (unspecified) administrator does the investigation, decides on the case and communicates the discipline to the respondent. Cariboo College and North Island College add an external investigator to this process. The external investigator presents her/his findings to the president who then takes disciplinary action. The rest of the colleges follow formal procedures similar to that of the universities, except that the investigating committees are usually comprised of members of the college community such as faculty, union members, administration and students (for cases involving student(s)). The president generally decides on the case when the committee submits its findings. Five institutions include hearings in the formal process; College of New Caledonia, Malaspina, VCC, BCIT, Camosun College. Fraser Valley College's policy indicates that hearings can be held. Time limits to all steps of the procedures are outlined in all the policies.

#### Other Characteristics of the Sexual Harassment Policies

The specific characteristics of the policies described in

the previous section, are drawn from the procedures outlined in each of the sexual harassment policies of the post secondary educational institutions. Yet there are some important considerations many of the policies appear to have overlooked. Based on my examination of the policies and procedures, certain design features appeared to me to have weaknesses that I have described below.

Most of the colleges in the province of British Columbia have one large campus centre and a number of smaller branch offices located within their (sometimes diverse) geographic region. The universities operate projects throughout the province, offer courses by correspondence and in some cases send instructors to small towns in the central and northern sections of the province to teach courses. In most of the sexual harassment policies, one person is responsible for receiving complaints, providing advice to the complainant and facilitating informal resolution. This person is always located at the main campus. A complainant attending a branch college in the Lower Mainland, the Fraser Valley or the Victoria areas, might not have difficulty contacting a sexual harassment complaint coordinator at the main campus, but in the outlying areas the branch offices are spread out over long distances. There is even more distance between the universities and many of the towns where their courses



are offered. For example, Simon Fraser University offers undergraduate and graduate courses in Kelowna, Prince George and Prince Rupert. Prince Rupert is almost a thousand kilometres from Simon Fraser University. How does a complainant in Prince Rupert get redress? Simon Fraser's policy does not say, and neither do the policies of the University of Victoria or the University of British Columbia. While a SFU student in Prince Rupert could phone the Harassment Coordinator in Burnaby, the complainant would have to incur this cost herself, as there is no indication in the policy or the handout materials that collect calls are accepted. The SFU Harassment Coordinator works only half time, so would she deal with the issue through letters and phone calls? The three universities have expanded services to the outlying areas in recent years, but it appears they have not considered that students in the hinterland also need protection from sexual harassment.

While most of the college policies do not spell out procedures for filing a sexual harassment complaint at the branch offices, four institutions indicate that the branches are covered by their policies. Camosun and Cariboo Colleges have volunteer contact persons at the branches who provide support to complainants at the initial stage. These contacts do not attempt to resolve the problem but refer the

complaint to the Coordinator at the main office, who takes over. North Island College with campuses on isolated First Nation reserves and branches spread out throughout Vancouver Island, posts the phone number (not toll-free) of the Harassment Mediator in all branch offices. This policy expressly includes the branches in its procedures. Malaspina College with a number of branch offices as well reports (not in the policy) that the Advisor will travel to the branches. The College of New Caledonia in Prince George with campuses in Vanderhoof, Quesnel, Mackenzie and Burns Lake does not indicate any special arrangements for complainants in the outlying area. A complainant is to meet with the Manager of Human Resources at the Prince George campus for informal resolution, for mediation and formal process. Capilano College with a branch in Squamish and courses offered in Whistler and First Nation reserves along the Howe Sound corridor as far north as Anderson Lake, also offers no special procedure for students in the outlying area. Considering that the Capilano College Harassment Coordinator works only seven hours a week, it seems unlikely that she would have the time to travel to Howe Sound.

Another concern alluded to in this section are the resources the institutions have allocated to the sexual harassment issue. Although this is discussed in further

depth by those I interviewed in the study, it may be relevant at this point to look at the resources allocated by the institutions. It should be noted that in addition to the personnel who deal with complaints, most of the institutions, also have sexual harassment advisory committees charged with policy and procedure evaluation, education program planning, and implementation, and in some cases mediation and investigation of complaints. All committee members are volunteers who have regular jobs not related to sexual harassment. These positions are not reflected in the table below, except for committee members who are also charged with taking complaints and facilitating the informal process.

**Sexual Harassment Policy and Procedures - November 1992.**  
**Position of person(s) who deal(s) with complaints and the amount of time allocated to sexual harassment by the institution.**

<u>Universities:</u>	Persons and Resources
Simon Fraser University	Harassment Coordinator Half time position (faculty)
University of British Columbia	Sexual Harassment Policy Advisor- 1 full time (staff)
University of Victoria	Harassment Officer - 1 full time (staff), 1 senior administrator and 1 faculty member who supervise and

assist in harassment cases.

Provincial Institutes:

British Columbia Institute of Technology

Volunteer Advisory Chair - no allocated resources (staff/faculty)

Emily Carr College of Art and Design

Volunteer Committee no allocated resources (counsellor/faculty)

Open Learning Agency

No policy - no resources

Pacific Marine Training Institute

No policy - no resources

Community Colleges:

Camosun College

Volunteer Sexual Harassment Advisors and Coordinator- no resources- (staff)

Capilano College

Harassment Advisor (outside person hired 1 day per week)

Cariboo College

Sexual Harassment Advisor 2 hours a week (faculty)

College of New Caledonia

Human Resources Manager no allocated resources

Douglas College

Volunteer Harassment Advisors no allocated resources (staff)

East Kootenay College

Policy in draft stage

Fraser Valley College	Complaint is brought to President who deals with complaint himself or delegates, no resources allocated
Kwantlen College	Administrator of department where respondent or complainant works or studies- no resources
Malaspina College	Harassment Advisor 2 days a week (counsellor)
North Island College	Volunteer Harassment Mediator, no resources (staff/faculty)
Northern Lights College	No Policy
Northwest Community College	No Policy
Okanagan College	To be announced - policy not complete
Selkirk College	Unknown
Vancouver Community College	Harassment Advisor Outside person hired half time

It should be pointed out that more time allocated for sexual harassment coordinators does not necessarily equate to more time spent in sexual harassment related work. For example, Capilano College hires a lawyer from outside the institution to come in seven hours a week, while a faculty member at Cariboo College is allocated only two hours a week to spend on sexual harassment complaints. Cariboo College

actually spends much more than two hours a week on sexual harassment work, as the faculty member who handles complaints devotes as much time as is necessary to complaint resolution. Capilano's coordinator who comes in seven hours a week has other work commitments and cannot spend more than these hours at the college.

Throughout the interviews, the Sexual Harassment Coordinators emphasized that sexual harassment work, either in its education component or in its complaint resolution process, is unlike other jobs as it is conducted on an irregular basis. Time is difficult to manage, as days can go by with no client inquiries or complaints, followed by days when the office cannot keep up with the deluge of clients wanting help and departmental requests for educational programs.

The nature of this work makes it difficult for part time outside coordinators, and volunteer faculty but especially for volunteer staff members. The specific problems that relate to these sexual harassment workers are outlined later in this chapter. The next section explores and considers the experience and opinions of those who work with these policies.

## What the Sexual Harassment Workers Said

I interviewed representatives and stakeholders of sixteen post-secondary institutions at varying stages of development with sexual harassment policies and procedures. Since the circumstances of each institution and each representative differed, my interview questions were never the same. My objective in each interview was however, the same. I wanted to know how satisfied each respondent was with how her/his institution was dealing with sexual harassment, her/his critical evaluation of the policy's strengths and weaknesses and how the individual felt about her/his role as a sexual harassment worker/stakeholder in that institution.

The following results of the study are broken into topic areas of the issues covered in the interviews.

### A First Policy

As of November 1992, six institutions had no sexual harassment policies and procedures in place. I was able to make contact with employees at four of these institutions who were trying to develop sexual harassment policies. I wondered if these employees had initiated this project on their own, or were directed by the administration to develop sexual harassment policies. I was also interested in finding out about any difficulties or barriers involved in

establishing a first policy on sexual harassment. I spoke with employees at three institutions who were working on sexual harassment procedures and another who had recently abandoned efforts towards writing a policy.

Respondents of all four institutions described a similar situation. The president or senior administrators seemed indifferent or unreceptive to suggestions from constituent groups in the college community that a sexual harassment policy was needed. The administration, they said, did not consider sexual harassment to be a problem at their institutions. The administration also believed that existing grievance policy and procedures would cover any complaints of sexual harassment.

At two of the institutions, human resource personnel initiated work on a sexual harassment policy following their dissatisfaction with how some "minor" sexual harassment incidents had recently been dealt with, with rumours of unreported sexual harassment incidents at the college and with allegations that women were being treated unfairly in some departments. Although they had not been asked by the administration to develop a policy, the human resources personnel hoped to convince the administration by presenting a policy already prepared, along with a strong rationale of why the institution should adopt the sexual harassment



policy. The human resources personnel claimed they were motivated by a sense of professional ethics. They were aware that their college was one of the few in the province without sexual harassment policies and they were concerned about the college's liability if a sexual harassment case was taken to the provincial human rights council. They wanted it noted, in case of a human rights investigation that they and their department had taken steps to develop sexual harassment policy and procedures as well as awareness programs. It should be pointed out that the Human Resources personnel were not the only ones at these two institutions concerned about the lack of procedures for sexual harassment complaints. In both cases female faculty and staff had lobbied the administration for some time to implement sexual harassment policies and awareness programs, but without success. Human Resources personnel developing policies and education programs consulted frequently with the women faculty and staff.

In another case, a faculty member supported by a women's committee at her college, was successful in gaining the administration's support to develop a policy after a critical sexual harassment incident attracted considerable media attention and pressure from the public. After the president announced that a policy was being developed,

attention from the media subsided along with the administration's apparent commitment for such a policy. This faculty member conducted indepth research into the incidence of sexual harassment at this institution and several months later presented the administration with the results of her study along with a draft copy of a sexual harassment policy. Her report and her proposed policy were submitted to the administration in 1991 but as of November 1992 the administration had not implemented procedures or appointed policy advisors to deal with complaints. This faculty member says she will not give up her struggle for a sexual harassment prevention program at the college. She says her motivation and strength to continue her efforts on this issue come from the desire to improve the learning and working environment for her students and women colleagues. She says it is worth the risk to her own career.

At another college, a personnel officer responsible for special needs students started to develop a sexual harassment policy out of concern for student groups she felt were highly at risk. After she had spent some time developing this policy, she was transferred to another area of responsibility and had to abandon work on the sexual harassment policy. "No one else seems to have any interest in sexual harassment", she said.

It is interesting that the initiative for developing a sexual harassment policy at these four institutions came from employees apparently concerned about the well being of their client groups. It is difficult to understand why senior administrators who could be held legally responsible and liable for sexual harassment on campus were so resistant to a policy that could only help offset their liability in such a case.

## **Policy Issues**

### **Informal Process**

Part of my reason for conducting interviews was to gain insight into how the sexual harassment policies and procedures work so I asked the respondents to describe their involvement with all three levels of the process.

The respondents whose policies had provisions for an informal complaint process explained that their role was primarily with the informal level of complaint procedure. At this level they advised complainants of their rights, assisted the complainant with any personal action such as writing a letter to the respondent, and then intervened on the complainant's behalf to resolve the problem on an informal basis. In the higher levels of resolution, such as mediation or formal action, institutional committees or

senior administrative officers directed the process and Sexual Harassment Policy Coordinator involvement was minimal. I asked them to estimate the percentage of complaints resolved at the informal level at their institution. The answers ranged from 60% to 98%.

Dissatisfaction with the policies focused on rigidity of prescribed procedures in the informal process, and rigidity of sexual harassment definitions that allowed some complainants to fall between the cracks of the system.

In discussion of this latter issue, coordinators with policies that covered other kinds of harassment in addition to sexual harassment, such as personal harassment, racially motivated harassment, felt their policies were superior to those that covered sexual harassment only. Those with policies that only covered sexual harassment wholeheartedly agreed with this assessment. The coordinators explained that sometimes there is a fine line separating personal and gender harassment cases from sexual harassment cases. Coordinators with policies covering sexual harassment only, said they have had to reject complaints that did not coincide exactly with sexual harassment definitions of their policy. This was painful for complainants who had nowhere else to turn to get a (non-sexual) harasser to stop. The coordinators pointed out that general harassment policies do

have some drawbacks. General policies generate a considerable number of inappropriate referrals, they said, and the following examples were offered: employees directed by their supervisor to report to the harassment office to resolve a personality conflict, or members of the same union who are directed by their shop steward to the harassment office, to work out a dispute. The coordinators explained that sometimes people try to avoid their own responsibilities by dumping their problems on the harassment office. The harassment coordinators did not accept cases like the ones outlined above, but dealing with this type of complaint was time consuming, they said.

The comments of the respondents seem to suggest that the best policy is one that offers the most flexibility for the coordinator to resolve the complaint in the most appropriate means possible. They also suggest that the worst is a policy that ties a coordinator to bureaucratic procedures that work against the interests of the clients. For example, a coordinator who was very satisfied with a revised policy that had recently been implemented at her college, said that one of its best features was a statement that said " These procedures are not meant to be restrictive and are presented as recommended procedures which are likely to be effective in most instances". This statement allowed this

coordinator to conduct informal resolutions in the way she felt best suited her clients. Her policy was the only one that included such a statement, but a number of the policies did not elaborate on methods for informal resolution. The coordinators I spoke to said this vagueness provided them with the flexibility they needed to resolve complaints informally.

On the other hand, coordinators of policies that prescribed specific procedures in the informal process, felt varying degrees of constraint in their ability to do the job. For example, all coordinators of policies that required that a complaint be put in writing prior to any informal intervention on the coordinator's part, reported that this had been a deterrent in some instances to the complaint proceeding further. These coordinators felt that this requirement was too rigid, but several felt that some kind of client commitment to the complaint resolution process was in order. A number of coordinators (including those at institutions that did not require clients to sign complaint statements) said they asked the client to sign her/his name to an action plan that involved intervention on the coordinator's part. This action plan served as a contract between coordinator and client, that helped the client clarify her/his feelings about the incident while

preventing misunderstanding at a later time between client and coordinator. The coordinators added that this client-coordinator contract offered them some protection in the event that the client took legal action against the institution. The coordinators concluded that they could think of no benefits to the written complaint requirement in the initial stage of the complaint process, but suggested that a client-coordinator contract could be useful in some cases.

Another requirement that concerned some coordinators, was the directive in their policies that the complainant confront the harasser her/himself before turning to the coordinator for help. This, in their view, was a barrier for some complainants and the coordinators voiced concern that sexual harassment could go unreported because of the complainant's reluctance to confront the harasser. All coordinators I spoke with whose policies contained this directive said in practise this was not a condition of service, but worried that potential clients would be scared away by the wording of the policy that implied it was.

All coordinators said they were strongly in favour of leaving the informal process to the discretion of the coordinator. The informal stage they said is largely an educational process where the coordinator facilitates change

for the relationship between the complainant and the respondent. As the process is informal and educational, any formal directives are inappropriate. The formal stage is more legal in nature where procedures such as signed statements are more appropriate, they said.

These coordinators add their experience and their opinions to an issue that is not without controversy in the literature. Hoffman (1986) argues that a victim should not remain anonymous during the informal resolution stage of sexual harassment complaints. She says that a woman will not be empowered and will remain in victim status, if she does not confront her harasser and does not put a complaint in writing. "Women's subordination will not be alleviated, as history has amply demonstrated, by protectionist policies, however benevolently conceived", Hoffman says (1986, p.117). Remick et al (1990) by contrast, take the view that it makes no difference whether the complaint is committed to paper or whether it is conveyed orally. The institution is responsible for sexual harassment prevention and could be held liable for refusing to take action in a sexual harassment case because a victim refused to sign a statement. These authors argue that the institution has a legal obligation to follow up on any information concerning sexual harassment on its campus, including complaints made



by third parties. Connolly Jr & Marshall (1990, p.397) in an article offering legal advice to college and university administrators recommends that the institution not require the student to confront the professor before reporting a sexual harassment incident since the prospect of such a confrontation would likely stifle legitimate complaints.

Remick et al's (1990) statement about institutional liability and third party complaints was a concern also raised by the coordinators. The majority of policies did not allow the coordinator to pursue third party complaints. Yet most of the coordinators who, for example, were told by a third party source that an instructor was soliciting his students for dates said they would not ignore this complaint. The coordinators said they would likely make an appointment to meet with this instructor to let him know what was being said and if necessary to educate him about sexual harassment policy and procedures. These coordinators said they could not pursue this type of case any further however, without the provision for third party investigation written into the process. The informal action of the visit, could be defended on the basis of a proactive educational initiative, rather than a third party investigation, they explained. It should be noted however, that only coordinators in paid or faculty positions felt that they

could take this initiative. Staff volunteers did not feel they had the status credentials, the authority or the time to do this. All the coordinators of policies that did not have provisions for third party complaints, said they worried about their institution's legal vulnerability in this area, and said they would welcome the addition of third party complaint procedure to their policies. The coordinators emphasized however, they could not manage the extra work load created by third party complaints unless their resources and time allocations to sexual harassment work were increased .

#### Mediation

None of the coordinators identified the mediation process or the absence of a mediation process as an issue of concern, but I asked the coordinators for their opinion on the effectiveness of mediation in sexual harassment conflicts. Their answers generally coincided with the policies and practises of their institutions. Those with policies that included mediation, defended mediation as an appropriate and effective dispute resolution tool for some cases. Those whose policies or practises excluded mediation, spoke vehemently against the use of mediation in any sexual harassment disputes.

The arguments in favour of mediation were much like Hoffman's (1986) views cited earlier on why she thinks women should be forced to confront their harassers. Mediation can be empowering for the victim, and educational for the harasser, they said. The exchange can establish the groundwork for a new understanding between the two parties, that is beneficial to both.

Those against mediation argued that it is simply inappropriate for sexual harassment cases. Mediation is supposed to help individuals of equal status come to a compromise position that both parties are satisfied with, they explained. "A female in this society never has equal status with males to start with and most sexual harassment victims are considerably lower in institutional status than the harasser so why should the victim have to settle on a compromise position?" "What does she have to give up", they asked.

Those defending mediation as a legitimate process for sexual harassment complaints were in the majority, but several union activists from campuses where mediation was used in a large percentage of cases, were highly critical of this process. They claimed the institutions' real motive for using mediation was to avoid the unpleasant task of having to impose discipline on faculty. Harassment victims

suffer from guilt, self doubt and lack of self esteem, they said and the institution manipulates these feelings by convincing the victim that she must accept responsibility for being abused. If a thief robs a store, the store owner is not expected to sit down and mediate a resolution with the thief, so why should a sexual harassment victim be expected to mediate with her attacker, they argued.

The mediation issue is controversial in higher education circles, but does not appear to be an issue at all in the private sector. The sexual harassment literature that focuses on workplace issues indicates that the private sector uses mediation rarely and only in cases where the complainant has misunderstood ordinary business behavior to be sexual harassment, or when the complainant requests a mediated confrontation with her harasser (Webb, 1991, Wagner 1992). Most of the literature that advises companies how to set up sexual harassment policies, does not even acknowledge mediation as a procedural possibility.

It is perhaps ironic that the practise of mediation as a part of the human rights conflict resolution model was borrowed by provincial human rights departments, from labour relations practises of large businesses (see Chapter 4, p. 14) during the early 1950s.

While the private sector does not appear to use mediation

in sexual harassment conflicts, mediation seems to have gained popularity over the past decade in the area of family law and in the resolution of family disputes. It may be significant to note however, that criminologists and social service researchers are now starting to have second thoughts about the mediation process and its impact on women. Hilton (1991, pp. 30-53) challenges the current trend of the courts and social services that channels battered women and their partners into mediation, where she claims, assumptions of equality of women in this process actually work against the interests of the battered woman. Mediation has been considered as an empowering alternative to the patriarchal legal approach because each participant reaches a voluntary decision rather than being the passive recipient of a judge's decision, she explains. Hilton claims that while the decisions for men in the mediation process might be voluntary, women tend to give in just to make peace. Hilton explains that women are socialized to yield to others and don the role of peacemaker. Women's attempts to conform their behavior to sex role expectations can undermine their bargaining power in mediation, she says. Mediators do not attempt to dissuade women from giving in or compromising too much, either. Mediators do not necessarily discriminate against women, she says, but they fail to recognize the

gender specific socialization patterns which render women vulnerable. Hilton concludes that the informal mediation system is failing women for the same reason that the formal justice system has; the androcentric ideology that governs the procedures of both systems. "Liberal reformism does not address the ideologies in which the continuing oppression of women as a whole is rooted. Because of this superficial remedial action, women's progress backfires and individual women continue to suffer" she says (Hilton 1991, p.53).

Hilton's comments about mediator bias and superficiality raise other important questions about the mediation processes conducted on B.C. campuses. What kind of skills and qualifications do the mediators used in campus sexual harassment disputes have? Only one policy indicated that it hired "qualified" outside mediators, one indicated that counsellors mediated, three policies said volunteers would be trained to mediate and the rest had no skill requirements at all for mediators.

Director of the Mediation Pilot Project for the B.C. Attorney General's office, Jerry McHale, says that the job of mediator is a highly skilled occupation that requires considerable training and experience. It is still a developing occupation, he says and to date no professional standards are in place though they are presently being

developed by practitioners. McHale notes that the skills of mediator are not well understood. Counsellors, lawyers, and teachers have some of the skills that are required in mediation, he says, but these skills in themselves are not enough. Specific mediation training and experience are necessary. McHale warns that untrained or inexperienced mediators can make a bad situation much worse. The mediation process itself he says, lacks procedural safeguards. It is a forum where a strong party can dominate a weak one. This risk exists even with highly trained and experienced mediators, he says. In a session that was comprised of an inexperienced mediator, a dominant respondent and a weak complainant, the complaint could face psychological warfare from the respondent that was more damaging than anything he had done to her previously.

McHale says his first task in the mediation process is to decide whether the power differences between the parties are too great to be overcome. Situations where one party has exploited the other, made physical threats or harmed the other, are almost always unsuitable for mediation, he says. When asked about the appropriateness of mediation for sexual harassment, McHale answered that he had no experience in this area, but said he would consider mediation dangerous in cases where there were considerable gaps in power between

complainants and respondents. (McHale, at C.A.A.S.H.E. Annual Conference, 1992)

*Overall feeling about policy*

Perhaps most coordinators were not critical of the mediation process in their institutions because they were not directly involved in this process. The coordinators had little comment on the formal complaint procedures either, which for the most part were also outside their direct involvement. Their major concerns with policy focused primarily on rigid procedures that limited service to clients or prevented coordinators from taking action most appropriate to client needs. Yet sexual harassment policy itself was not identified as the primary concern in the prevention of sexual harassment on campus. In all the cases where sexual harassment workers, advocates or other stakeholders voiced dissatisfaction with the policy, they also vented their anger and frustration at the administration's apparent lack of concern or lack of support. A number of coordinators told me that they believed that an institution's actions speak louder than its words, that how policy is worded is less important than the action or inaction taken when a sexual harassment incident occurs.

Williams et al (1992, p.51) point out that the sexual harassment literature is almost devoid of any systematic



examination of the impact of institutional policies on the incidence, either reported or actual, of sexual harassing behaviors on university campuses. They go on to describe their own study on the impact of the University of Massachusetts's sexual harassment policy on sexually harassing behaviors between the years of 1983 to 1989. They found that after a number of faculty were disciplined for sexual harassment against students in the mid 1980s, the numbers of complaints against faculty declined, while the numbers of complaints of peer harassment increased. The study concluded that the publicity about the sanctions against faculty was a major deterrent to faculty members, while students, not exposed to either education or publicity about sanctioned harassers were not deterred. This study may provide some evidence that an institution's actions indeed speak louder than their words. It also gives credence to the coordinators' opinion that an administration's genuine commitment to prevent sexual harassment, must include its willingness to impose sanctions on offenders.

Other essential components of a successful sexual harassment prevention program, the coordinators said, included strong personal and professional qualifications of the person hired or assigned to the sexual harassment

coordinator position, recognition given to sexual harassment workers, appropriate resources dedicated to sexual harassment prevention, and administration's receptiveness to the improvement of policy and procedures. Several coordinators and stakeholders unhappy with their policies, said their battles with the administration focused on the need for policy improvement, but they conceded that a better policy would likely fail without the administration's support of the policy. The next section looks at the issues the coordinators identified as priority concerns.

#### **Priority Concerns Identified by Respondents of the Study**

##### **Lack of Resources**

In response to my question, what frustrates you the most in your job, sexual harassment workers from six institutions cited the lack of resource allocation to sexual harassment work as their biggest source of frustration. Significantly, this complaint came from those in part time coordinator staff positions as well as from volunteers who were expected to deal with sexual harassment business on their own time. Those who were not dissatisfied with the resource allocations were full time Sexual Harassment Policy Coordinators, and volunteers who were allowed as much time off work as they required to deal with sexual harassment

complaints, to consult with other agencies and colleges and attend meetings. Senior administrators who handled the informal stage of the complaint process were not interviewed in this study.

#### **Institutions that Hide Behind Procedures That Do Not Work**

I spoke with members of two institutions that assigned senior administrators to deal with sexual harassment complaints. The respondents I spoke with had no formal role in sexual harassment work, but said they were deeply frustrated with their institution's sexual harassment policies because the administration seemed to be avoiding its responsibility to deal with the problem.

Respondents from one institution said that complaint reporting procedures did not reflect reality. Few complainants ever reported directly to the senior administrators for informal discussion about their problem, they said. Instead, complainants sought out an advocate from a student organization on campus. This advocate, who was well known on the student and staff grapevine, counselled the client, offered advice and accompanied the complainant to the administrator's office to inform the administrator of the action the client wished to take. This unpaid and unrecognized advocate in fact did most of the work in the

informal process. The representatives who told this story said this system had its plusses and minuses. The volunteer advocate was in fact doing the job that the institution should have been doing, and this was not fair, they said. Also, this advocate was strictly a volunteer who would leave a huge gap if she left the organization. On the plus side, the advocate helped clients who may not have reported the incident because of their reluctance to approach a senior administrator, and the advocate likely did a better job than the administrator in upholding the complainant's interests, they said. The volunteer advocate agreed with her colleagues' observations and added that she was successful in negotiating very satisfactory agreements for her complainants. Complainants would have likely settled for less than what they were entitled to without her intervention she said. I asked her if she thought the college should hire her to be a sexual harassment coordinator. Surprisingly, she said that although she has lobbied hard for the establishment of a sexual harassment office and an officer, she would never take the job. "I am more effective as an adversary to the administration", she said. "I would be compromised as their employee. Right now, they are afraid of me and I like it that way". This advocate said that even though the administration can see

that complainants do not trust them, no steps have been taken to tailor the policy to the needs of the victims.

A respondent from the second institution said she was dissatisfied with the administration's efforts to prevent sexual harassment simply because they seemed not to exist. At this college, there was no informal advocate, and students and staff were expected to approach a senior administrative officer to discuss sexual harassment complaints. Very few people ever file sexual harassment complaints, she said, and because there are so few complaints, the administration thinks it is doing a good job. This respondent said that she herself had experienced sexual harassment but she had chosen not to report it. With no job security or union protection she said she could not afford to be labelled a trouble maker.

The experience of these respondents adds to evidence in the literature that women are more likely to report sexual harassment if they can deal with a female advocate in a student affairs office rather than a male administrator in the offender's department (Meek and Lynch, 1983, Biaggio et al, 1990, Sullivan et al 1985).

Remick et al (1990, p.194) argue that the person responsible for hearing and/or investigating charges of sexual harassment should be in areas where students and

staff feel comfortable going, such as an office for affirmative action. But they warn that the only persons appropriate to receive complaints against faculty are those with enough credibility within the system that a finding of sexual harassment would be taken seriously and result in appropriate action.

#### *Volunteerism problems*

The most unhappy sexual harassment workers I spoke with were from one institution that relied completely on the efforts of volunteer support staff to deal with sexual harassment complaints in their spare time. This was a college with a number of branch campuses spread over a small geographic area. The college had appointed a head volunteer at the main campus to coordinate the work of volunteer sexual harassment advisors at each of the branch campuses. This arrangement had been in place for over two years, and there had been considerable turn over of advisors from the branch campuses. At one point all the volunteer advisors quit en masse to protest the administration's treatment of the sexual harassment issue. I spoke with an advisor and the coordinator who said that both the protest and the high turn over of volunteers were due to a complete lack of recognition of their sexual harassment work by supervisors,

the administration, outright hostility from some male faculty members and resentment by coworkers. The advisor I spoke to, said she had quit for a period of time but decided to resume the position when no one else would do it. Part of the reason for hostility of male faculty members could be attributed to status differences, they said. The coordinator was not a faculty member and most of the advisors were clerical workers. The literature as well indicates that sexual harassment workers with institutional status that is lower than their clients presents major credibility problems. Yet, both women felt that lower status was not the biggest barrier to doing their job. The major problem was that volunteers were not allowed to deal with sexual harassment business on company time, a rule that was frequently broken. The advisor explained that complainants would phone, and she would make arrangements to meet during coffee break or lunch hour. Often time was too short and on a number of occasions she could not just leave the complainant in tears and go back to work, she said. There were also "emergencies" during office hours when she just had to leave. When she returned to her desk, sometimes up to an hour later, her coworkers and her supervisor would be glaring at her. "I feel guilty when I'm advising women on company time but I feel compelled to do it because my

support really helps them", she said. The coordinator had the same problem. Her supervisor was constantly looking over her shoulder to check if she was working on college business or harassment business. Both women said they were on the verge of filing their own harassment grievances against their supervisors.

The coordinator said she had been trying for two years to convince the principal to implement changes to the procedures that would improve the situation. Her suggestions for improvement included a complaint reporting system that was easier for complainants, a designated area where volunteers could meet privately with complainants and respondents, release time for volunteers, and a small honorarium paid annually to volunteers. The principal agreed that changes were necessary but said all constituent groups had to concur with the proposed changes, before he would approve them. All constituent groups except one favoured the procedural improvements. The faculty association opposed the proposed changes from the beginning and progress has been stalled for two years. Both women are willing to persevere. Both say that they will continue to do this work on a volunteer basis, in spite of the college but at the same time they are very committed to the college.

Although the women at this institution focused on problems



related to their volunteer status, their main problem appears to be with a president who will not respond to their concerns. He appears to acknowledge the need for change but will not take the required action. Instead he leaves decision making up to constituent groups at the college, and allows the faculty association to stand in the way of much needed procedural improvement. The volunteer sexual harassment workers made it clear that not all faculty were opposed to changes they had proposed, just the elected representatives of the faculty association. These women are not the only ones who told this story. Representatives at three other institutions that do not rely on volunteer labour for sexual harassment prevention, described exactly the same problem. At two of these institutions, a sexual harassment policy has never been implemented and the institutions have operated on interim procedures for some time, because the faculty association has refused approval of the proposed policy. At each one of these four institutions, presidents or principals have insisted that the faculty association's approval was conditional to his implementation of a sexual harassment policy and procedures, or revisions and amendments to existing policies.

### *Isolation*

All the sexual harassment policy coordinators said the job was lonely and isolating. They attributed this largely to the confidentiality required for the job which meant they could not talk about their work with colleagues. Normally colleagues establish bonds of friendship through the sharing of ideas and feelings about their work, they explained, but due to their inability to discuss their jobs, the sexual harassment coordinators said it was difficult to establish or maintain social relationships on campus.

Those who worked on sexual harassment part time and another position on campus the rest of the time, may have experienced less alienation and isolation than full time coordinators or those who came in from outside the campus to work part time. Most of the part timers who had another job on campus, said they had been part of the campus community for some time and had already established contacts and friendships. These coordinators said they were able to continue these friendships that were established in the context of their other job, but several reported a change of attitude towards them by some of their male colleagues. When they were appointed to the sexual harassment position some male faculty who were previously friendly, became distant and cool, the coordinators said. One coordinator who had recently been hired in her position, said she had been asked

in the interview how she would cope with being the most hated person on campus. At the time, she said, she thought the interviewers were joking or greatly exaggerating, but she said she is starting to discover how close to the truth the question was.

Coordinators who came in from outside the institution to work on sexual harassment issues part time, said their outside status was the biggest obstacle to gaining the credibility needed to do an effective job. They said it was impossible to contact a male colleague just to chat or discuss possible education programs. The man was immediately hostile and defensive and probably terrified that he was going to be accused of sexual harassment. An insider who had another regular job besides the sexual harassment position would not have this problem, as she could be calling for a number of reasons, they reasoned. The coordinators said the colleges' rationale for hiring an outsider was that complainants and respondents would feel more comfortable talking to a party neutral to the college, but the coordinators found their outsider status a major liability. The (outside) coordinators I spoke with, were not happy with their sexual harassment coordinator positions and quit after less than six months on the job. They were quick to acknowledge that had they stayed longer, the

problems might have been worked out, but they said they got considerably more job satisfaction from their work outside the college.

#### *Occupational Hazards*

A number of coordinators said there are occupational hazards for sexual harassment policy coordinators. While the coordinators said they were given support and encouragement from women colleagues, some indicated they were also subjected to threats both overt and covert from men in the academy, who viewed sexual harassment policy as an affront to their academic and civil liberties. All sexual harassment workers can be vulnerable to physical attack and emotional and professional blackmail, they said.

The majority of sexual harassment policy coordinators reported that they had experienced some kind of personal harassment from members of the college/university community since taking on the coordinator job. In addition to being treated in an indifferent or contemptuous manner by some, several reported that they had received anonymous obscene and threatening phone calls at home, at work and on phone message machines. Coordinators who had been subjected to threatening phone calls said they lived with constant tension and fear that they might be physically harmed.

Those who received harassing phone calls at home, changed their phone numbers and had to incur the additional costs of an unlisted number. One coordinator said she tried to convince her administration to pick up these additional personal costs, but she was unsuccessful. The coordinators who had been threatened said they felt physically vulnerable, and said they had become extremely aware of their physical surroundings at all times while on campus, ensuring they were never alone in dark corridors or in the parking lot at night. One coordinator set up a regular check in system with campus security that she used whenever she was working at night. She also made arrangements for security personnel to meet her at her office after work and walk her to her car.

One respondent, who was her institution's first harassment policy coordinator said she suffered emotional distress when she became the target of a campaign to discredit her. The coordinator had been in the position only a short time, when a number of anonymous letters were sent to the president of her institution, demanding that she be fired due to her lack of suitability for the position. The letters which were supposedly from students, alleged that she seduced her students. The president, she said, was not swayed in any way by these anonymous letters and offered his complete

support, but she was nonetheless concerned about this smear campaign. The coordinator said she learned that the letters had been written by faculty members, not students. After this incident, the coordinator decided to adopt a low key and non threatening approach, with faculty, which involved seeking compromise solutions to most problems. She also learned to choose her battles and took strong stands only on selective issues. When asked if the intimidation campaign against her had in fact succeeded, she answered that she had to do what was necessary both for personal survival and for the future of the harassment coordinator position.

Sexual harassment workers who had experienced harassment and intimidation on the job, said they found it ironic that they were there to support and protect others, but no one was there for them. Some coordinators joked that they should be getting danger pay for the personal and professional risks involved in sexual harassment work. But on a serious note the coordinators said the job does have certain dangers which should be acknowledged by the administration and prepared for by sexual harassment policy coordinators prior to taking on the job.

#### Other Issues

I spoke with a professor who said there should be safeguards against retaliation, not just for victims of sexual harassment, but for third parties who offer support to sexual harassment victims. This professor said she lost her job in 1990, with a large and prestigious educational institution in the province, after she offered support to one of her students who had lodged a sexual harassment complaint against a faculty member in another department.

The professor said she was in a tenure track position, but was on probation for a two year period which was almost up at the time the alleged sexual harassment incident occurred. The professor decided to offer support and encouragement to this student because she had heard other students complain about this faculty member, but no one had yet gone forward with a formal complaint. This professor said her support for the student was extremely low key. She accompanied the student to the sexual harassment office, and acted as an observer during mediation. That was all. She said she did not discuss this issue with anyone else at the institution. The professor said she was stunned when the institution refused to confirm her tenure and would not renew her contract, as she had published more than anyone else in her faculty that year and had received extremely positive feedback from her department and her students about her

work. The only reason offered for her dismissal was that she didn't fit in with her colleagues. She took her case to the campus Ombudsman, to B.C. Labour Standards and the B.C. Human Rights office, but her case was refused. The professor is now a full time faculty member at another post secondary educational institution in the province, but says she still feels damaged by what happened to her.

#### CONCLUSIONS

Almost all of the sexual harassment policies of the B.C. colleges and universities call for a periodic evaluation and review of the procedures and it appears that most of the sexual harassment policies that are more than two years old have been reviewed and amended since they were originally implemented (see table on pages 19 and 20). The sexual harassment coordinators I spoke to said amendments and changes were made in order to bring the policy in line with the reality of the institution's practise, or because a particular procedure or lack of clarity with a procedure presented problems for sexual harassment workers or clients. The coordinators said that their sexual harassment policies were developed largely on a trial and error basis because there were few other resources to draw on.



Throughout the 1980s, literature on sexual harassment in higher education focused primarily on its existence and its prevalence. Literature on issues involving the human resource implications of sexual harassment policy and procedures did not start to appear until 1990, and even in 1993 this literature is scarce. It is hoped that the observations of sexual harassment workers of British Columbia interviewed for this study, contribute to this literature and provides some useful background to institutions planning procedures for a first sexual harassment policy or those considering changes for existing procedures.

The sexual harassment workers in this study paint a picture of a rather half hearted effort in sexual harassment prevention by the majority of the post secondary educational institutions in the province. This is not inconsistent with the observations of the authors cited at the beginning of the chapter who claim that sexual harassment is not dealt with seriously by most institutions of higher education in Canada, the United States and Britain.

Sexual harassment prevention is characterized by respondents of the study as under funded, under resourced, regarded with indifference by the administration and opposed by powerful constituency groups on campus. At the same

time, those who are appointed by the administration to deal with complaints and conduct education programs are given little support to do their jobs, while some are required to use procedures that actually deter potential clients from seeking their services. Sexual harassment workers experience isolation and also fear for their own safety and well being. They feel they perform their job out on a limb, that could snap and break at any time.

Five institutions in this study rely on volunteer labour to deal with sexual harassment complaints and conduct educational programs. Among the volunteers are those, expected to do sexual harassment work on their own time. These were by far the most dissatisfied and unhappy respondents, interviewed. By contrast, other volunteer workers who are allowed as much release time as necessary for sexual harassment work said they were satisfied with both the institution's policy and their roles in the institution. It should be noted that there are status difference between these two groups of volunteers. The volunteers, dissatisfied with their jobs and the institution's sexual harassment procedures are support and clerical staff, while the group allowed release time to work on sexual harassment complaints is comprised of faculty and professionals.

Union and student advocates interviewed had some observations about senior level managers who take on the role of sexual harassment coordinator in addition to their other roles. They said these managers have few complaints to deal with because victims of sexual harassment do not trust them and do not report complaints. Instead victims seek out an ombudsman or women's advocate to talk to. The experience of these respondents matches the results of research cited in the literature that women are most comfortable reporting sexual harassment complaints to a women's or an ombudsman's office.

#### Personal Reactions

In my role as interviewer and researcher, I had some observations and feelings about the issues that were raised, that I would like to share, in the conclusion of this chapter. I found the stories of the professor who was fired and the unhappy volunteers most alarming and deserving of some comment.

The story of the professor who was fired after she demonstrated support for a student who had been sexually harassed is disconcerting, not only because the institution appeared to act in a corrupt and unfair manner but also because the only other agencies in society where one can

seek redress from discrimination, failed this woman as well. It should be acknowledged that only one side of this story was told and it is entirely possible that this professor was denied tenure for legitimate reasons, such as not meeting the institution's professional standards. This professor was convinced that this was not the case. She told me that the employer had insisted that her personality, not her work was at issue. This seemed odd to me as the woman had a gentle and unassuming manner. The professor was without a doubt in an extremely vulnerable position when she chose to offer support to her student, as she had no job security at the time. She was aware that her tenure could be denied for reasons as fuzzy as poor personal suitability, but never imagined that supporting a student in the way she did, would cost her, her job. After her contract expired, she no longer had rights to the avenues of redress open to members of the institution and because she had not personally been sexually harassed, her problem was not one Human Rights or Employment Standards could deal with.

Almost all of the sexual harassment policies of the B.C. educational institutions include a role for third parties - persons who accompany the complainant to meetings or to mediation and who act in a support capacity. While a number of the sexual harassment policies include language that

protects the victim from retaliation by the alleged harasser, none suggest the possibility of third party victims or retaliation by third party sources. As the experience of the professor indicates, third parties can be vulnerable and must be afforded protection as well. A considerable percentage of women faculty at university and college campuses do not have tenure and have no job security, so it is probable that other women have suffered the same fate as this professor (Dagg & Thompson, 1988, UBC Census 1992). It stands to reason that without some kind of protection given to staff members without job security, most academic women can not afford to take the risk of helping other women on campus.

The volunteers who have to do sexual harassment work on their own time, in my view are being treated in an outrageously manipulative and possibly illegal manner by the institution. Sexual harassment prevention is the institution's responsibility and therefore should be dealt with on company time. The sexual harassment advisors and coordinator although they have agreed to "volunteer" their own time to resolve sexual harassment complaints are still doing the college's work. The college may be on shaky legal ground to oblige these women to "volunteer" for work for which they are rightfully due overtime wages. Penalizing

these women for doing this work on company time, adds insult to injury. In my view these volunteers would do a greater service for women in the long term, by quitting their volunteer positions and forcing the college to face its responsibility.

Although only five educational institutions in B.C. rely entirely on volunteers for sexual harassment complaint resolution, all the institutions rely on volunteer committee members for some part of the sexual harassment work including; education, complaint investigation, mediation and policy evaluation. As well, institutions that designate only part of a faculty member's job as a sexual harassment policy coordinator expect this faculty member to volunteer her own time if necessary to get the job done. Most of the people I spoke with said their institution as a rule did not act swiftly and decisively in disciplining faculty sexual harassers. As most complaints were resolved informally, sanctions were rarely imposed on most offenders.

Why volunteerism comprises such a large part of sexual harassment work on college and university campuses is a perplexing question. Educational institutions are legally required to uphold human rights standards and health and safety standards. Human resource professionals are hired by the institutions to develop programs on equity issues, while

qualified trades people are hired to keep the premises environmentally safe and in line with Workers Compensation Board standards. Sexual harassment prevention is both a human rights and an environmental safety issue, yet the institutions lean heavily on volunteers for this program. The administration by allocating a lesser monetary and resource value to sexual harassment than other comparable human rights issues, sends a symbolic message to its constituents that sexual harassment is of less importance than other issues. Furthermore, asking its employees to give up their own time to deal with sexual harassment complaints, is a convenient way for the institution to avoid taking responsibility for sexual harassment.

Perhaps the most important observation of the sexual harassment workers is that the wording and procedures of sexual harassment policy is far less significant than the action the institution actually takes when confronted with a sexual harassment case. Most of the people I spoke with said their institution as a rule did not act swiftly and decisively in disciplining faculty sexual harassers. As most complaints were resolved informally, sanctions were rarely imposed on offenders.

Because the B.C. educational institutions rarely impose disciplinary action on sexual harassers, it is questionable

how much of a deterrent effect the sexual harassment policies of B.C. colleges and universities have. Even in the rare cases where faculty members have been sanctioned, the confidentiality policy usually prevents the institution from publically disclosing that sanctions were imposed, so deterrent effects are limited.

Some of the most publicized cases of sexual harassment in the province have involved peer harassment, which Williams et al (1992) suggest has become a more prevalent and persistent problem than faculty/student harassment. Some of the sexual harassment coordinators I spoke to said that their institution more consistently imposes discipline on student sexual harassers than on faculty. Student do not have the contract protection that faculty has and they have considerably less power and influence, so there are fewer ramifications on the institution arising from discipline, they said. These coordinators said the sexual harassment complaint process operated most effectively with peer harassment cases and least effectively with faculty/student cases.

Sexual harassment prevention programs are still in the beginning stages of development at the majority of campuses in the province, and most coordinators acknowledge that it will take time for the programs to work. The biggest



obstacle to sexual harassment prevention, they say is the administration's lack of commitment to the program's mission. The policies start out with statements like "the institution has a responsibility for education, prevention and swift action in relation to incidents of harassment" or "the college will not condone or tolerate harassing behavior". The coordinators live with the hope that their administration will someday take these statements to heart.

## INTRODUCTION

This thesis has examined the issue of sexual harassment in academe from a historical, social and legal perspective by tracing women's experiences of ascendancy and of oppression throughout the last millennium. A contemporary view of the responses taken by the colleges and universities in British Columbia to sexual harassment issues on their campuses was also provided.

This chapter concludes the thesis with analysis of the sexual harassment prevention programs described in the previous chapter, and offers both criticism and recommendations aimed at improving the campus climate for women. Hopefully this thesis will provide a starting point that will stimulate other ideas for reconstructing sexual harassment policies.

Lerner (1986) and Schaef (1985) assert that the challenge to patriarchy cannot begin until we break free of the structures of white male thought that control us. This is not always easy, as it is often difficult to separate what we know from our experience as women from the programming

and conditioning of the culture. The structures of white male thought in sexual harassment prevention policies, on the other hand, are highly visible, and this chapter will point them out.

Before presenting this analysis, however, it may be pertinent to reflect on some of the lessons provided by history and take stock of present political and economic realities that could have an effect on sexual harassment and gender equity policies at post secondary institutions in British Columbia.

#### LESSONS FROM HISTORY

As Faludi (1991) points out, while the 1970s were the pinnacle of women's liberation in history, women have been steadily losing ground in the workforce over the past twenty years. There has been a slight increase in the numbers of women faculty hired in Canada over the last five years and a record number of women were awarded graduate degrees (45%) in 1992, (Statistic Canada 1992) but one cannot interpret these increases as an upward trend towards employment equity for women in academe or the beginning of the end to systemic discrimination against women in academe. History has shown

that working women have made the greatest gains during times of economic prosperity. Yet every time women gain power and self-esteem, they are struck by a backlash which coincidentally occurs when they are in direct competition for jobs with men. The 1990s have been marked by recession and the job market is tightening in all sectors of the economy, including post secondary educational institutions. The backlash in academe and in other sectors is currently manifesting itself through the consequences of budgetary belt-tightening.

With severe financial constraints facing post secondary institutions in British Columbia, many retiring faculty members are not being replaced, staffing levels are being reduced in many departments, and those without job security such as the new women hired on tenure track but still without tenure, sessional instructors and limited term appointments are extremely nervous about their job future, as they know they are highly vulnerable. Instructors and courses, however, are generally not victims of the first round of budget cuts during restraint periods. Services that provide support to students such as information services, computer accounts and counselling are usually the first to go. Positions such as Sexual Harassment Prevention Officers, Equity Officers and the funding that goes with the

administration of programs that redress sexism such as sexual harassment, discriminatory hiring, promotion and pay practises are under close scrutiny at this moment at a number of colleges in the province.

When one considers the issue of sexual harassment in the context of other issues facing college and university administrators, such as budget shortfalls, declining funding and increasing costs along with more strident demands for service from every sector of the campus community, it becomes apparent that sexual harassment prevention programs have fallen to the bottom of many college administrators' priority lists. Although it may not seem like an appropriate time to push for equity issues on our campuses, history suggests that women are particularly vulnerable to sexual exploitation and discrimination when their livelihood and economic survival is on the line. History also suggests that the preservation of equity programs will depend on the success of the political offensive launched by women stakeholders in academe and in society. This is not to say that political action will guarantee success, but inaction will guarantee failure.

It would cost provincial legislators very little to come to the rescue of sexual harassment prevention and equity programs. The province could simply require post-secondary

institutions to have them. The Ontario Ministry of Education and Training not only requires colleges and universities to have sexual harassment policies in place, but also ensures the policies and procedures meet provincial standards. The British Columbian government, to date, has demonstrated no concern about sexual harassment in higher education.

I am arguing that programs aimed at protecting women from abuse and intimidation are essential to women's continued participation and their well being at institutions of higher education and should not be cut. I am not however, endorsing or defending the specific sexual harassment prevention programs or redress procedures outlined by the Sexual Harassment Coordinators of British Columbia in the last chapter, nor the ones described in the literature. Most ought not be defended "as is" because the programs do not appear either to protect women from sexual harassment or prevent it, though the interests of the institution appear to be protected. The worst part of these policies is the deception. All policies state that the institution will not tolerate sexual harassment but in reality most of them do. Sexual harassment prevention programs are essential but the present ones must be redesigned.

## WHAT IS WRONG WITH SEXUAL HARASSMENT POLICY & PROCEDURES?

Bolman and Deal (1985, p. 169-185) in Modern Approaches to Understanding and Managing Organizations use a symbolic framework to explain how institutional policies work. The symbolic frame, they explain, departs from traditional canons of rational thought and instead identifies the symbols that mediate the meaning of organizational events and activities. From a symbolic perspective, an organization's formal structures and policies create a ceremonial facade that beams the correct signals of the day to the appropriate audience. For example, he says, an organization with no affirmative action program signals nonconformity to prevailing expectations and nonconformity invites criticism. The institution need not change its hiring policy, as the presence of an Affirmative Action officer is all that is required to satisfy its audience. This officer represents the symbol of change. "Watchdog" agencies serve the same symbolic function, he says. Very few accomplish very much, but their presence increases the public's sense of security.

Observed through this symbolic lens, the Human Rights Commissions (watchdog agency) and sexual harassment policies (ceremony) are only facades erected by society and

educational institutions to provide the appearance that human rights are taken seriously. Yet, these facades are not as benign as one might expect. A closer look at human rights law and sexual harassment policy reveals a foundation of bias against the victim. These are some of the "White Male Structures" that Schaef and Lerner discussed earlier.

The assumption underlying all Canadian human rights redress programs including sexual harassment, as was discussed in Chapter 4, is that those who harass or behave in a way that discriminates against or offends others are simply uneducated and uninformed and need to be enlightened through information and education. No matter how much emotional injury the victim has suffered as a result of sexual harassment, the law never punishes the harasser although if he is an employer he is sometimes required to reimburse some of the victim's wage losses. The onus of proof that sexual harassment occurred and that the harasser needs "education", is on the victim, who has very little to gain personally or financially by filing a complaint. This is the philosophy adopted by human rights commissions in Canada and also by institutions of higher education. Although this philosophy claims to be based on education, in fact no education takes place. Human Rights Tribunals do not reeducate those found liable for sex discrimination nor



can they force an employer to become reeducated by making him take a course on sex discrimination issues. This contradiction between the philosophy and practise of human rights law underlines some of the hypocrisy inherent in it.

In spite of the fact that a victim will get little more than apology, it can take a long time for her to get it, due to an extremely high level of caseload backup at Human Rights Commission offices. The employees of Human Rights offices are not at fault for the toothless Acts and Codes or the unacceptable backup of case loads. The politicians are to blame for this callous neglect of Human Rights in Canada. If Bolman or Deal were to examine Human Rights law in Canada they would likely note that this facade has very little lustre left on it.

It is in this climate of political ambivalence to human rights, that universities and colleges are designing their sexual harassment policies and procedures, careful to ensure they have covered the minimum criteria expected by Human Rights Officers enforcing the Codes but even more careful not to give anything more away. A number of Sexual Harassment Coordinators I interviewed, for example, said that staff lawyers had reviewed the first drafts of sexual harassment policy and procedures their committees had proposed and had argued against "extras" such as third party

complaint procedure, complaint deadlines of more than 6 months and verbal rather than written complaints in the initial process. The lawyers' arguments won in spite of committee objections.

It may also be worth noting that most of the educational institutions with resourced positions in harassment prevention in B.C., hired lawyers to fill the Sexual Harassment Policy Coordinator positions. This is odd, considering that most Coordinator job descriptions call for counselling, negotiating, mediating and teaching abilities but not legal skills. One can not help but wonder if the institutions do not feel uneasy about the integrity of their sexual harassment policies and feel they might need a lawyer in case of trouble.

There is nothing wrong with the sexual harassment policies as they are written. The policies indicate that sexual harassment will not be tolerated and offenders will face a range of sanctions including the loss of employment. The problem is that the policies are not adequately enforced and so have little deterrent value. Occasionally lecherous professors do lose their jobs, but very rarely do colleges and universities allow one of their own to be sacrificed in this way. The real purpose of the policy and procedures is to create the illusion that the institution is taking

responsible action against sexual harassment and also to provide a ceremonial ritual in which both the complainant and the respondent can become renewed. Bolman and Deal liken policies and procedures to a game.

The game is played with a Sexual Harassment Policy Coordinator as the gatekeeper, whose job it is to channel the victim into a course of action that will disturb the privileged male members of the academy the least. The Sexual Harassment Policy Coordinator offers empathy and reassurance and establishes a relationship of trust when the victim tells her story. The Coordinator's main challenge is to placate women who have been harassed by the privileged males so that the women will not take further action either inside or outside of the academy or tell others about the men who abused them. Victims are told they have the right to informal action, mediation or formal action, but very few ever choose formal action. Hilton (1991) states that women are socialized to yield to others and adopt the role of peacemaker. The Sexual Harassment Policy Coordinator does not coordinate policy. She is a peacemaker. First she negotiates a peace plan with the accused harasser and then she plays on the victim's self doubt and social conditioning to yield to her harasser. In practise this means the Coordinator spends much of her time convincing harassers to

apologize and victims to accept the apology. This is not to say that the Coordinator does not help the victim to feel better. She often does, and victims often claim that an apology is the only redress they want, but the apology offered to the victim under the cover of confidentiality and secrecy does not help other women. These confidential little têtes-a-têtes have little future deterrent value on the harasser in question or any other potential harasser in the academy, as informal action does not result in any kind of disciplinary action. It does not even result in a letter of reprimand on his personnel file. The Coordinator may keep a written record of the incident, but her files are completely confidential, so he has nothing to worry about. After his apology the lecherous professor is free to hit on victims again as most policies do not call for automatic formal action against repeat offenders. The policies are almost all victim driven without provisions for third party intervention, which means Coordinators can not take any action against a repeat offender, or in fact any harasser. The responsibility for dealing with sexual harassment is placed directly on the shoulders of the victim.

As the policy coordinators indicated in the previous chapter, the majority of their cases are resolved informally, but a small percentage of cases do go to the

formal level. At a number of educational institutions in B.C. the sexual harassment procedures are in conflict with faculty and staff union agreements, which gives these employees several more levels of grievance procedures and appeals than the sexual harassment policy indicates, and protects the harasser from any immediate discipline. If the institution wants to impose stiff penalties on a harasser, it has to be ultimately prepared to be taken to court by the respondent. This can cost the institution considerable time and money and it is not necessarily good public relations for the institution. Because it is so much more expedient to negotiate a compromise with the harasser and his lawyer, than to go the distance of grievance procedures, appeals and possibly court, that is what most institutions do. A recent example of such a bargain is suggested in the Province newspaper on November 5, 1993 (p.A5). Dr. Colin Godwin of the University of B.C. was accused by three graduate students of sexually harassing and embarrassing them and other women students during a field trip to Chile in May. A UBC press release said "the disciplinary action was hammered out and a statement agreed on that included a provision of no further comment by any of the parties". "Godwin has agreed to serve a two month suspension without pay", the press release concluded. Because none of the parties will

discuss what happened in this case, it is not possible to determine what action UBC originally planned to take against this professor. The words "disciplinary action was hammered out" and "Godwin has agreed", however, suggest that some hard bargaining took place. This conflict between administration policy and union contractual terms is of great concern to a number of constituency groups in higher education and one that could be solved by the administration declaring primacy of sexual harassment policy over all union contracts.

Charles J. Sykes (1988) points out in ProfScam: Professors and the Demise of Higher Education that university presidents, deans and administrators are only symbols of authority. In fact they have very little, he says. Administrators are almost powerless to touch a professor who is honoured by peers, whether rightly or wrongly, because the university is really run and controlled by professors, he claims, not administrators. Sykes explains that administrators lost their power when universities changed from being primarily teaching institutions to the research institutions they are today. The status of the institution is now derived from the research of professors. The higher the level of prestige in the professor's research, the more financial grants and recognition the institution will get.

University presidents now work in a support capacity to the professors, Sykes claims, to help them do what ever it takes to attract corporate and government funding. Sykes' main argument is that most of the research done at universities is meaningless and trivial. He claims that students are getting a poor education, the public is being short changed and he prescribes taking back the university from the professors, who he claims have become corrupt under this system. Sykes' analysis provides an additional dimension to the explanation of why sexual harassment is allowed to exist at university campuses. He might argue that administrators are not necessarily trying to preserve the "White Male System". They simply do not have enough power to fight it.

The redress portion of the Sexual Harassment Prevention Program has been considered, but there is another portion yet to be discussed which is believed by most institutions to be the driving force of the prevention program. Education programs on sexual harassment are conducted on a regular basis at many post secondary institutions and are targeted to high risk groups on campus such as male dominated faculties and work departments or newcomers to the campus. It is no easy task to sell the sexual harassment policy, however. One of the most powerful teaching tools used by public speakers and teachers is the telling of

stories or anecdotes (Egan, 1986). Stories communicate messages in a way that listeners can easily remember. They are entertaining, they give security and they are also propaganda. The important message Sexual Harassment Policy Coordinators need to convey is that the administration will not tolerate sexual harassment, but this is hard to prove. Very few offenders have ever been disciplined and due to confidentiality the Coordinators cannot name them or discuss them anyway. All the Coordinators can really say to these male dominated groups is that sexual harassment and violence against women is morally wrong and harassing behavior is bad. Several Coordinators I spoke to said they found many of their workshops frustrating, as the men laughed in the all the wrong places during films on harassment and they ridiculed the facilitators throughout the presentation. It is not surprising to me that those targeted or forced to undergo sexual harassment training probably felt coerced, manipulated and resistant to the message. Most people hate being preached at, especially on moral issues. If sexual harassment education is to succeed, myths will have to be made and told. These myths are stories about those who sexually harassed others and how it ruined their careers and the lives of others. In order for the myths to be made, the rules on confidentiality will have to change.



Confidentiality helps only the harasser, not the victims or the institutions. Educational prevention programs that are used to support a policy that is enforced can be effective. Education used as a substitute for enforcement appears to be doomed to failure. The United States has recently taken a novel approach to sexual harassment prevention education. It has discovered that stiff financial penalties have a much stronger educational impact on harassers than discussions or film presentation. I think we can learn from this American experience.

Although sexual harassment policies have been in effect for well over a decade at some of the American universities, almost no research has been done to assess the outcomes of these policies. One study researched the impact of sexual harassment policies on sexually harassing behavior in higher education (Williams et. al, 1992) and concluded somewhat tentatively that tough penalties have a deterrent effect on harassing behavior. Although I am arguing that this outcome only makes common sense, the effect of sexual harassment policy is largely unknown. It is evident that more evaluation studies of sexual harassment policy ought to be done, although I admit that the creation of a reliable instrument to evaluate this policy is by no means an easy task. In the study discussed by William et al. three

surveys from 1983 to 1989 recorded the incidence of sexual harassment at the University of Massachusetts. Williams et al then linked the results to the institution's sexual harassment policy, concluding that because there was a decline in harassment by professors, the policy had worked. In my opinion, while the survey approach is useful, the link to policy is too large a stretch in itself. Other research initiatives such as follow-up studies of those disciplined for sexual harassment and still working at the institution, exit interviews of complainants and respondents using the policy, satisfaction surveys of victims at the end of the process might help to enhance the validity of such policy evaluation, but there are still many other variables to consider, such as institutional climate and the people involved in policy enforcement. The creation of a reliable instrument for sexual harassment policy evaluation would be an extremely valuable contribution to the field.

#### THE APPARENT CONTRADICTIONS TO THIS ARGUMENT

Sexual harassment prevention efforts in the post secondary institutions of British Columbia were characterized in the previous chapter as under-funded, under-resourced, regarded with indifference by the administration and opposed by

faculty unions and associations. How can the argument be made that sexual harassment policy is designed to protect the white males, when the white males appear to be trying to subvert it?

This is most puzzling and hard to understand, until one realizes that they are likely feeling threatened. In the last five years a tiny beach head of feminism has established itself in this male empire. The modest increase of women faculty to a present twenty percent has been upsetting enough to some male faculty. The hiring of women with feminist views, the growing acceptance of feminist research, the growing numbers of women entering graduate programs and even the concept of a policy that protects women from sexual harassment has been too much to take for a number of men, traditionally used to getting their own way at the expense of others with less power. The very idea of sexual harassment policy is so offensive to them, they cannot even see how ineffective it is. Sometimes their anger is acted out against the Sexual Harassment Policy Coordinator who is treated like a pariah and is isolated from the rest of the community. The threats, the obscene phone calls, and the danger that many of the Sexual Harassment Policy Coordinators described, occurs because the president or the principal as previously noted, is afraid of

the faculty and will not jeopardize his relationship with them in order to protect her. While everyone knows the president must speak out against sexual harassment, the president can still prove he is "one of the boys", by waffling on committee recommendations for improvements to the policy, by slapping wrists of sexual harassers rather than imposing discipline, by financially starving sexual harassment programs and by looking the other way when anger is vented at the Sexual Harassment Policy Coordinator.

Meantime, as the women of the campus notice the increasing male hostility towards sexual harassment prevention, they join ranks to support the women working with the program and to form a lobby to fight for the program. Because the energy expended by both the pro and anti feminist forces is directed at each other, neither side is able to see the program for what it really is - dysfunctional.

## CONCLUSION

Throughout this chapter, I have argued that Human Rights Tribunals and higher education administrators are too soft on sexual harassers. I have also suggested that the

philosophy that they should be reeducated rather than punished is no more than a cruel joke to those who are abused. This line of argument may seem antithetical to the "partnership way" advocated in Chapter 3, that decries our present societal model of domination where each level of the hierarchy has the right to assert power over the level below. As I am suggesting that those who violate the rights of others should be made to submit to an entity more dominant than they are, and be forced to make meaningful restitution to their victims, the dominator model is being supported in this instance. There appears to be no other choice if we are serious about ending sexual harassment and sexual exploitation. The soft educational approach has not worked. It may be worth noting that the partnership societies collapsed because they became overpowered by the dominators. This should not be allowed to happen again.

## RECOMMENDATIONS

### Limitations

This thesis has focused on the history of discrimination against women and has argued that sexual harassment policy protects the interests of the dominant group in society, rather than the women it is supposed to protect. The question now, is how specifically should sexual harassment

law be changed and what reforms should post secondary institutions make. These are big questions that cannot be adequately addressed without considerably more research and consultation with stakeholders; perhaps the topic of a PHD thesis or other graduate study. I have come up with some ideas, but wish to stress that they are only ideas. Based on my criticism of existing laws and policies I have formulated solutions which make sense to me at the theoretical and philosophical level. They have not been vetted against logistical, practical or budgetary considerations. The following recommendations are offered as a starting point for discussion and future research.

## **Recommendations**

### **Sexual harassment law reform by Government**

1. Human Rights law should be reformed
  - a. The complaint driven model is changed to allow Commission or any third party the right to pursue complaints
  - b. Human Rights philosophy is changed to allow punitive action to be taken against offenders
  - c. Victims can sue their harassers
  - d. Compensation limits for victims are eliminated
  - e. A timely service is provided to the public
  - f. The Commissions are structured as independent agencies, free from the risk of interference from government or other powerful agents.
  - g. The Acts and Codes have primacy over any conflicting legislation including the Constitution.
  - h. The Act and the Code require employers to implement

sexual harassment policies and procedures that are designed according to a government framework.

2. The provincial government ministry responsible for higher education should announce a program of "zero tolerance" for sexual harassment at colleges and universities (as in Ontario). The ministry should also oversee post secondary sexual harassment programs. Program policy should include:
  - a. A requirement that colleges and universities implement sexual harassment policies and procedures that are designed according to a ministry framework
  - b. Ministry approves each policy and provides assistance to institutions that require it.
  - c. Ministry conducts on-site monitoring of institutional programs as well as annual evaluation of each policy.
  - d. Ministry provides consultation to Harassment Coordinators on all aspects of Harassment prevention including the planning of educational programs and available educational materials and resources.
  - e. Ministry is involved in selection process of Sexual Harassment Policy Coordinators at each college and university including volunteers and Ministry facilitates training for Coordinators.
  - f. Ministry intervenes in situations where Coordinators are threatened or harassed to ensure appropriate process and action takes place, or in situations where it has reason to believe that due process did not take place.

#### Rationale:

The rationale for the changes to Human Rights law has already been outlined, but the suggested role of the Ministry of Labour and Job Training has not. Because college and university presidents have generally demonstrated reluctance to provide strong leadership in sexual harassment prevention, the Ministry has to set the example and ensure presidents deal seriously with the issue. For this reason, the Ministry must assist the presidents to design effective programs and to work with them until it is satisfied that the programs are working well. The other

reason for Ministry involvement is to provide consistency in human rights protection for all students and academic staff of the province. The program also gives the presidents support to take a hard stand against collective bargaining groups that refuse to recognize the primacy of sexual harassment procedures and process. "Zero Tolerance" is envisaged as an on-going policy but the program is to be reviewed after three years. It is hoped that once the program has been in place for this time, on-site monitoring and on campus service can be reduced.

### Sexual harassment program reform at post-secondary institutions

1. The post secondary institutions should announce a Zero Tolerance policy, informing the community that sanctions now range from one year suspension for the lightest offense to dismissal for a more severe offense. Policy changes should include the following:
  - a. The coordinator not the victim drives the process.
  - b. All complaints are investigated and if warranted, the institution takes formal action against the accused.
  - c. The victim can still opt for informal action and settle for an apology if she wishes, but the institution must still take formal action unless the Coordinator feels it is not in the best interests of any of the parties involved. This discretionary power should be exercised only in special circumstances.
  - d. The victim's name is always kept confidential, and no record of her complaint is ever entered onto her personal or academic records, unless her complaint is proved to be vexatious.
  - e. Names of those found by the college and university to be liable for sexual harassment, will be released to the media, along with details of disciplinary action taken by the institution, unless the release of this information will interfere with the process of concurrent legal action. All action of a disciplinary nature is recorded in respondent's file.
  - f. A committee comprised of students, support staff, academic staff and management be recruited to conduct an on-going review of the sexual harassment policy and procedures. This is an advisory group that makes recommendations to the president whenever necessary.



2. The societies that represent students (and that collect thousands of dollars annually in student fees) should announce that they will hire a lawyer on retainer to be available to any student who wishes to pursue a sexual harassment complaint. This lawyer would assist and counsel the student through the complaint process, ensuring that her/his interests were represented. Legal services would also be made available to the student, if she/he opted for legal action outside the institution, in connection with an incident pertaining to the institution. Students accused of sexual harassment could also utilize this legal service, although a second lawyer would be hired to assist in cases where both complainant and respondent were seeking legal help. This service would be offered at no cost to the student.

#### Rationale:

As discussed in Chapter 5 and in this chapter as well, the institution is responsible for preventing sexual harassment but is also liable for the behavior of its staff. Although the victim is entitled to redress, the victim should not be allowed to obstruct the institution either from disciplining offenders in an appropriate way or from carrying on its prevention program via the use of a deterrent strategy. It is anticipated however that once the responsibility for the complaint process shifts from the victim to the institution, more victims will be comfortable with formal rather than informal process. This approach has worked well with battered women, for example, who are fearful of filing charges against their husbands themselves, but welcomed a recent policy change that allows the police to charge their husbands. Other recommendations for sexual harassment policy have already been discussed.

The last point about lawyers for students is not an afterthought, but could be a vital component of the sexual harassment prevention reconstruction program. Student societies at the larger institutions are extremely wealthy organizations, fat from compulsory student fees collected by institution's administration. These student dollars pay for clubs, sports and social activities. In the serious social and economic climate of the 1990s, this is a questionable way to spend students' money. I am suggesting that legal assistance with sexual harassment problems is a relevant and

worthwhile way to spend student dollars. Even if all the above recommendations are accepted and sexual harassment prevention becomes a government driven program, the institution cannot be trusted to ensure students get the redress or the legal representation they are entitled to. Students have to empower themselves.

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