Gender Harassment of Women in Unionized Nontraditional Professional Occupations in British Columbia: An Evaluation of Legal Redress Procedures

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ABSTRACT

Gender harassment in the workplace is widespread and costly for women and their families emotionally, physically, and financially. Although legislative mechanisms exist to allow employees to seek redress for workplace harassment, very few women file harassment complaints, partly because processes associated with legal options are convoluted and inadequate information and support are available to women who attempt to navigate the legal system. In order to provide women with information about their legal options, three qualitative research goals were undertaken: the efficacy of procedures associated with legal redress options were analyzed, an information booklet outlining legal options was created, and the first two goals were accomplished with the contributions of three research participants. Some of the recommendations arising from the evaluation include elucidation of and education about the types of behaviours constituting harassment, clarification of definitions of harassment in the legislation, and clarification and communication of procedures for addressing harassment complaints.

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[1] Canadian Union of Public Employees (1999).

[2] This summary is taken, verbatim, directly from the British Columbia Human Rights Tribunal 2007-2008 Annual Report, with permission.

ACKNOWLEDGEMENTS

*We women are visible and valuable to each other, and we must, now in our billions, proclaim that visibility and that worth. Our anger must be creatively directed for change. We must remember that true freedom is a world without fear. And if there is still confusion about who will achieve that, then we must each of us walk to a clear pool of water. Look **at** the water. It has value. Now look **into** the water. The woman we see there counts for something. She can help to change the world.*

(Waring, 1999, p. 264; emphasis in original)

To the members of my thesis committee, Drs. Deborah Poff, Jacqueline Holler and Sherry Beaumont, thank you for your inspiration and guidance and for sharing your infinite wisdom with me. I also offer my deepest gratitude to the three women who so selflessly shared their experiences of harassment, whose contributions kept me inspired throughout this process. Sincere thanks to Rheanna Robinson for her thoughtful review of my thesis proposal. To my colleagues in the Gender Studies Program, I appreciate you sharing your insights, friendship and kitchen tables, but most especially your laughter, with me. I extend heartfelt thanks to my dear friends and family, whose support I could not have done without, for graciously accepting my absence on many occasions and for being my greatest sources of encouragement and comfort throughout this process. Extra special thanks to my husband Darwyn for providing me with tender care and for always keeping the home fires burning, and especially for always allowing me the time and space I require in order to do whatever I feel compelled to do. Finally, to the pioneering women around the globe who continue to break trails and conquer obstacles so that future generations of women will have opportunities open to them that my generation could never have imagined, and the men who support them, I express my utmost admiration.

CHAPTER ONE

INTRODUCTION OF THE RESEARCH TOPIC

The aim of the research undertaken for this thesis is to study gender harassment of women in unionized nontraditional professional workplaces in British Columbia. In particular, the legislative options for reporting and seeking redress for harassment are examined. The major focus in this regard is placed upon the procedures associated with filing claims in legal arenas, and whether the legislation and associated procedures assist or hinder potential complainants. In this chapter, the nature of the research undertaken for this thesis is introduced. The research topic, including the research question and research objectives, is outlined, and important terminology used in the thesis is defined. Finally, the reasons I chose this research topic are now discussed.

Selection and Significance of the Research Topic

My interest in the topic of women who are harassed and the potential for their unions and other legislative means to assist them began with my own life experience. I faced personal harassment from the president of the union where I was employed. I will call my harasser Karen. I found this experience disturbing, particularly given Karen's position as the president of a union executive. I was unable to reconcile my belief in the egalitarian nature of unions with the union president's behaviour, which was completely at odds with the union's "equality statement."[1] Although the harassment I experienced from Karen was not of a severe nature (it consisted of behaviours constituting public humiliation and bullying) it

[1] The Canadian Union of Public Employees' Equality Statement is contained in Appendix A.

caused me both anger and angst. I confronted Karen (respectfully, in private) on a few occasions, and was met with her reluctance to take responsibility for her actions. My interactions with Karen slowly whittled away at my self-esteem, confidence, and ability to make decisions. I was eventually impacted, both at work and in other areas of my life, by Karen's tactics. I felt that I should have been able to resolve this situation on my own, but through all attempts to do so, I achieved little relief. All I longed for was that Karen leave me alone and let me do the job I adored, which I felt I was quite capable of doing well until she came along. In an attempt to achieve this end, I consulted my union's business agent.

The business agent advised me that a grievance could be pursued, but added that, based on my union's collective agreement, I would be encouraged to enter into mediation with Karen prior to launching a formal grievance. I did not question my business agent's advice, I just assumed that it was correct and that he was offering me the best possible option for resolution. By this point, I was so irate and distraught about the impact this woman's behaviour had on my comfort in the workplace and my self-esteem that I had absolutely no appetite for mediation. I was also of the opinion that if I attempted to pursue a complaint, it might backfire on me. I might motivate Karen to become even more of a bully than she already was, worsening my situation. As a result of the consultation with my union's business agent and the advice he provided me, I decided that proceeding down the union complaint path was a dangerous proposition. I thus strengthened my resolve to ignore Karen's behavior, all the while questioning whether I was the cause of the problem.

After approximately three years of experiencing Karen's wrath, albeit sporadically, I could no longer take it. I felt battered and beaten. I went to my physician and requested a month of "sick" leave. During that time, I found another job and left my position with the union. After only a month on my new job, I felt like a new person, and was able to perceive the destructiveness of Karen's behaviour. I slowly and thankfully began to comprehend that my gut instincts, which I had begun to question as a result of my experience, were correct. I was capable and sane, and Karen's behaviour was unacceptable. I had not been treated with respect, and I deserved to be. The union, which I felt should have been my ally, did little to support me or help me achieve respite from Karen's onslaught.

Shortly after my adventures with Karen, I became acquainted through the media with the case of Ms. Jeanette Moznik, a firefighter with Richmond Fire Rescue Services. Ms. Moznik was employed in a male-dominated unionized professional workplace and had been harassed relentlessly to the point of her life being endangered: her male co-workers placed feces in Moznik's work boots and pants and "cut off her water supply when she was battling a fire" (Klie, 2006, p. 1). The nature of this workplace, as a workplace in which the vast and historical majority of employees were male, seemed to be one that would lend itself well to feminist analysis. The woman in this case appeared to have been perceived by many of her male co-workers as having intruded upon their "rightful" territory. Perhaps because her union executive members were drawn from members of the workplace in which this woman worked, which was eventually found by an arbitrator to be discriminatory (Ready, 2006), her union was less than helpful. However, in mediator Ready's

written decision, he made no reference to the union having failed Ms. Moznik, which is understandable given the grievance was directed at the employer for failing to provide a harassment-free workplace, but is nonetheless somewhat misleading.

Although I had not experienced harassment on a scale anywhere comparable to what Ms. Moznik had experienced, I felt tremendous empathy for her. I was moved by the strength it must have taken for her to challenge her harassers. I was also intrigued by the fact that the laws designed to provide redress for sexual harassment did not permit her to resolve her case in the courts, obligating her instead to deal with a union that appeared to be part of her problem rather than contributing to a solution. I could not help wondering whether Ms. Moznik might have achieved better resolution, or at least had a better experience, pursuing her complaint through the courts. Although the judge's decision in Ms. Moznik's case was in accordance with the law, it seemed to add insult to injury. Overall, the process she was forced to endure seemed to be convoluted and dehumanizing, culminating in a remedy that did not seem worthwhile given the arduousness of the process. With regard to addressing her sexual harassment, Ms. Moznik's union seemed to have deserted her. This result is not inconsistent with other women's experiences of seeking assistance from their unions. A discussion paper from the British Columbia Federation of Labour (1980, p. 22) found that "[o]f the women who reported seeking help from their unions, there was a fairly even split of those who received aid and support and those who did not." As a result of my experience and learning about Ms. Moznik's encounter, I came to believe that legislation and associated processes designed for pursuing workplace sexual harassment

complaints, including union grievance and arbitration procedures, was a topic worthy of investigation, and that doing so from a feminist perspective would be most appropriate.

It is not my intention to suggest that men cannot be targets of workplace sexual and gender harassment. Indeed, the definition of harassment that is used in this thesis is not limited to behaviour inflicted upon women. However, women's experiences with workplace harassment are the chief focus of this research. I justify this approach by virtue of my deep personal anguish and anger regarding what I view as the lingering effects of the historical oppression of women, subjugation that, according to Harris and Firestone (1997), among others, continues to take place in workplaces around North America. It is these feelings, and my personal experience, that inspire me to undertake this research. As Armstrong and Armstrong (2002, p. 14) suggest, "all issues are women's issues."

Since this thesis is concerned with women's experiences with harassment legislation, it is essential that the legislation be examined. However, the structures within which the legislation functions, namely the workplace and the larger societal context, must also be taken into account in order to comprehensively understand the functioning of the legislation. Providing the legislative analysis and situating it within this framework provides the foundation upon which the personal lived experiences of the research participants contributing to this thesis are then overlaid. With the assistance of the participants, themes that exist in relation to potential "problem areas" with harassment legislation and the processes it engenders are identified and discussed.

Attempting to understand whether procedures associated with legislative options may discourage women from pursuing harassment complaints is of particular interest. Most women who are targets of harassment in the workplace choose not to report the harassment (Aggarwal, 1992; Aggarwal & Gupta, 2006; Carr, Huntley, MacQuarrie, & Welsh, 2004; Harris & Firestone, 1997; Seagrave, 1994; Stockdale, 1996). Inaction occurs for many reasons, one being the expectation that the process of pursuing one's claim will not only fail to result in a resolution (Aggarwal; Aggarwal & Gupta; Canadian Human Rights Commission, 1983; Carr et al.; Seagrave), but may actually exacerbate the situation (Aggarwal; Carr et al.; Harris & Firestone; Seagrave). Carr et al. (p. 9) found that most women who formally reported harassment were of the opinion that "the experience of reporting the harassment was as bad as, or worse than, experiencing the initial harassment." The costs of reporting harassment are often substantial, ranging from damaged relationships to health concerns to being "labeled as troublemakers" (Carr et al., p. 7). Consequences of reporting may also include losing one's job, either by being fired or feeling obligated to quit as the result of a poisoned work environment (Aggarwal & Gupta; Carr et al.). A discussion paper commissioned by the British Columbia Federation of Labour in 1980 (p. 22; emphasis added) indicates that "[f]ifteen women [of 203 respondents] told of being fired or denied promotion for *reacting against* sexual harassment . . . ." When compared with the consequences associated with reporting harassment denoted by Aggarwal and Gupta and Carr et al. a quarter-century after the 1980 report, one can see that the implications for women who report harassment had not changed substantially in 25 years.

The women interviewed by Carr et al. (2004, p. 45) cited two major reasons for failing to report harassment, namely that they did not think it would be worth their while to do so, and because race or language issues "hindered their ability to report." As mentioned, my interest lies with examining whether and how procedures for filing harassment complaints might contribute to the documented lack of reporting and pursuit of harassment complaints. Some of the women who participated in the study by Carr et al. identified policies and procedures associated with reporting harassment as a potential barrier to reporting. The fact that complaint processes might operate in a manner that contributes to women's reluctance to report harassment is concerning and obfuscates the extent of the problem. I also question whether failure to report harassment might be related to deficiencies in the availability and accessibility of information regarding legal options for filing complaints of workplace harassment, and the convolution of processes associated with legal options. In particular, I am concerned about whether the legal options and associated procedures for filing complaints of workplace sexual harassment or gender discrimination are clear and accessible to women needing to make use of them. Carr et al. (2004) found that the lack of clarity of processes sometimes prevented women from seeking resolution. Legislation that exists for preventing and addressing harassment should be helpful to women who are harassed. In addition, it is not unrealistic to expect that those who administer these legal options, such as employers, trade unions, and government agencies, would provide guidance and support for women seeking redress for harassment.

Trade unions, being physically situated in the workplace and having historically championed the rights of working people in many regards, are in a particularly strategic location to provide women with information and support regarding workplace harassment. However, research[2], different cases reported in the media, and my personal experience lead me to believe that unions do not always provide as much support as one might expect. Although unions have done much to improve the rights of workers in general, women's issues have often been neglected (Cockburn, 1991; Seagrave, 1994; White, 1993). Union representatives may lack the training, knowledge, or desire necessary to provide women with adequate guidance in seeking redress for harassment (Carr et al., 2004). Although Section 12 of the British Columbia *Labour Relations Code* (2006) prevents union representatives from acting in a manner that is "arbitrary, discriminatory or in bad faith," it does not necessarily protect against union apathy or incompetence. Furthermore, information provided on the British Columbia Labour Relations Board website makes clear that the Section is strictly interpreted and the responsibility rests with the complainant to prove the allegation. Although a woman's union is potentially her initial point of contact for information and support, and could thus be a tremendous resource for women who are harassed, a woman may be impeded in her attempts to receive quality assistance from her union.

In a 1980 discussion paper entitled "Sexual Harassment in the Workplace," the British Columbia Federation of Labour's Women's Rights Committee suggested that further research was required in the area of sexual harassment of women working in nontraditional occupations. Such research remains difficult to find, and

[2] See for instance the detailed report by Carr et al. (2004) and Cockburn's 1991 work.

organized, concise, and current information regarding legislative options and processes does not seem to exist. In addition, there is a deficiency of evaluative research into the efficacy of legal mechanisms for reporting and addressing gender harassment in Canada. Carr et al. (2004) report that, for the most part, information regarding procedures for filing harassment complaints either does not exist or lacks clarity. As a result, women seeking redress for workplace harassment may be at a loss when attempting to determine how to proceed with a complaint. Furthermore, support services for those who decide to report harassment are often nonexistent (Carr et al.). Possibly owing to the lack of experience of those working in legal fora, and the complexity of information regarding legal options for dealing with harassment, complainants are bounced from one legal forum to another, and they have difficulty finding good, affordable lawyers who are familiar with workplace harassment (Carr et al.).

Union representatives, lawyers, and others who are in a position to formally defend women seeking redress for sexual or gender harassment are often unaware of the implications of being the target of, and reporting, harassment (Aggarwal & Gupta, 2006; Carr et al.), which limits their ability to provide quality assistance. However, women may be partially aided in their pursuit of redress for workplace harassment simply by being provided with concise and accurate information about the legal options available for addressing harassment, how to access these tools, and what to expect when accessing them. If women had this information, it might aid them in filing, and to make decisions about filing, complaints. If women were provided with the information they required to pursue a claim in a particular legal

arena, they might achieve better legal outcomes, or at least have some idea regarding the most appropriate option for proceeding, if any. If the legal options, associated processes, and potential outcomes are presented to women, and in a manner women can understand (rather than "legalese"), their capacity to determine whether and how to proceed may be improved. The work of Carr et al. (2004) and my own experience with harassment suggest that women's decision-making capabilities may be severely weakened as a result of being harassed. For that reason alone, it is important that women have access to as much information as possible regarding legal options, in a useful format, to guide them in their decisions for pursuing resolution for workplace harassment. Without that information, women may be either unlikely to proceed or to obtain satisfactory resolution. It is understood, however, that while such information is essential, it may not be sufficient to enable women to pursue legal options.

The usefulness of legislative options for addressing social problems is debatable. For instance, if critical legal theorists are correct, respect likely cannot be legislated, at least not overnight. Seagrave (1994, p. 207) contends that:

> [t]he male overclass treated the entire issue [of harassment] with contempt before and trivialized it by not even recognizing it in law. Now that sexual harassment is recognized in law, the male overclass merely pays it lip service, relying on many powerful factors to ensure that the vast majority of sexual harassment cases never get into a courtroom or even formally filed as complaints. . . . When necessary the male overclass will change what it says but not what it thinks, feels, and does. For the vast majority of females the new laws against sexual harassment in the workplace have been nothing more than smoke and mirrors holding out much but delivering little – business as usual for the male overclass.

Seagrave's point is well taken, but if the legislation and associated processes for seeking redress for sexual harassment are examined and potential "problem areas"

illuminated, it is not beyond the realm of possibility that beneficial changes to the law and associated processes might be forthcoming. Determining where and how sexual and gender harassment law might be improved could potentially lead to benefits for women seeking redress for sexual harassment. Educating women about working with, and within, the legal system might help them achieve redress for harassment claims.

A major premise of this thesis is that, if women are valued, a higher priority will be placed on ensuring that their human rights and dignity are respected, including within the workplace.[3] In addition, if women are aware of their options for seeking redress, they may be more inclined to access those options and insist that others treat them with respect in the workplace. Women may also be apt to use those options more readily if they are educated about how to do so. In any event, a major aim of the research undertaken in this thesis is to ensure that women are provided with clear and accurate information regarding the legal options for seeking redress for workplace harassment. That way, if women choose to proceed with a complaint, they can do so from a position of being informed, as this is the very least they deserve as valuable human beings.

Defining Terminology

The thesis title contains most of the terminology requiring definition. An explanation of why certain concepts were chosen is also necessary. The title of the thesis is "Gender Harassment of Women in Unionized Nontraditional Professional Occupations in British Columbia: An Evaluation of Legal Redress Procedures."

[3] For instance, see Appendix B for an idea of how a Valued Employee Policy, as opposed to a Harassment and Discrimination Policy, might look.

Terms in the title requiring definition or explanation regarding their selection are "women," "nontraditional," "professional," "occupation," and "legal." These terms are defined and explained below. The reasoning behind my choice of particular terminology is also included in the course of defining the terms.

The focus of this thesis is on women, in part because I consider myself at least somewhat of a participant, or "insider researcher" (Smith, 1999, p. 137) in this research, writing from my perspective as a woman who has faced workplace harassment. In addition, women are, according to the literature, by far the overwhelming majority of those harassed in the workplace (Aggarwal & Gupta, 2006), and as a result of my personal experience in this regard, I have a deep commitment to improving access to information for women who seek legal redress for harassment. Concerns about defining women in relation, or as binary opposites, to men are touched upon later in the thesis. That being said, the research in this thesis can apply equally to men and women who are harassed.

A "nontraditional" occupation, for purposes of this thesis, is simply considered to be an occupation that has been historically and traditionally undertaken by men. Defining a "professional" occupation is not a straightforward task, as various ideas exist about what constitutes a professional occupation. Industry Canada has classified occupational categories in accordance with the "North American Industry Classification System" (NAICS) of 2002.[4] One of these industry categories is entitled "Professional, Scientific and Technical Services," which contains occupations such as legal services, accounting services, and architectural, engineering and related

[4] Further information on this classification system, or "NAICS," can be found on Industry Canada's website at http://www.ic.gc.ca/eic/site/cis-sic.nsf/eng/h_00004.html.

service industries. Only one of the participants in this research was employed in an occupation contained in this category. The others were employed in occupations Industry Canada classifies as "Construction" and "Public Administration."

In this thesis, I did not rely on the classifications of the NAICS in constructing a definition of a professional occupation. The NAICS system of categorization of industries was created to facilitate uniform statistical reporting between Canada, the United States and Mexico in relation to the *North American Free Trade Agreement*, and as a result, is a "conceptual framework where establishments using similar production processes to produce goods and services are grouped to form industries" (Industry Canada, 2008a, ¶ 5). This system may be the standard for classifying industries in Canada, but I have defined a professional occupation in this thesis by relying more generally on some of the characteristics of a professional occupation as outlined by NAICS. For instance, industries in the NAICS category of Professional, Scientific and Technical Services are distinguished by "the particular expertise and training of the service provider" (Industry Canada, 2008b, ¶ 4) and the fact that "[m]uch of the expertise requires a university or college education, though not in every case" (Industry Canada, 2008b, ¶ 7). These types of characteristics separate the occupations of the research participants from occupations consisting of tasks typically described as general or "unskilled" labour, although I recognize that all occupations require some level of skill. The principle of specific expertise, training and education required of professional occupations is exemplified in the comments of Participant 3[5] in this research study. This woman indicated (emphasis added) that

[5] Three women participated in the research undertaken for this thesis, and to protect their anonymity, they are referred to as Participant 1, Participant 2 and Participant 3.

she had worked with co-workers who, despite the fact that she had the requisite qualifications, "only would let me fetch and carry and haul material around and treated me like a *labourer* mostly . . . ."

Occupations such as policing, firefighting and carpentry, for instance, are sometimes referred to as "blue collar" occupations. For purposes of this thesis, however, they would be taken to be professional occupations because they require specialized training or education and because individuals employed in these occupations normally belong to professional associations or have achieved some other type of recognition such as licensure by a regulatory body. In the occupation of firefighting, there is a clear distinction drawn between "professional" and volunteer firefighters, owing to the training and education required to belong to a professional firefighters' association or body (see, for instance, the British Columbia Professional Fire Fighters' Association and the International Association of Fire Fighters). To provide absolute clarity, the women who participated in this research study were employed in industries related to construction, public safety and health sciences, in occupations that routinely contain the word "professional" in their titles or require those working in the occupation to belong to a professional association.

The reason I have chosen research participants in occupations I have termed "professional" occupations for purposes of this thesis is because all employees working in these occupations, regardless of gender, are presumably required to meet the same educational and training standards of employment. Thus, it could be presumed that women in these occupations would be treated similarly to their male co-workers. In effect, professional occupations, as defined above, were chosen for

their potential to underscore the role gender plays in the workplace. Then again, as a result of the complexity of comparing workplaces, occupations, and harassment experiences, inferences can in no way be drawn in this regard as a result of this research.

With regard to the definition of "occupation," for purposes of this research, an occupation is defined as a particular role one undertakes in the course of being employed. According to this definition of an occupation, a workplace could consist of one or more occupations housed in a single location. For instance, taking a hospital into consideration, several occupations are housed within a single workplace, some of them being traditionally male-dominated (for instance, doctor) and others traditionally female-dominated (nurse, for example). Bishop (2005) contends that organizations are more than a culmination of the individuals who work within them, that they are actually entities unto themselves. I propose that Bishop's reasoning is also applicable to occupations, owing to the particular traits, language and roles that may be associated with particular occupations and into which those entering the occupation are indoctrinated. For this reason, I felt it important to define a singular occupation as a factor for investigation as opposed to a workplace that may consist of several occupations. However, I have referred to both sexual harassment and gender discrimination collectively throughout this thesis as "workplace harassment" rather than "occupational harassment" simply because this is the more commonly used language. Nontraditional professional occupations were chosen for examination in this thesis as they lend themselves well to an analysis of the

workplace as a site for the expression and preservation of gender roles, as discussed in Chapter Three.

For purposes of this research, the terms "legislative" or "legal" are used to refer to options and processes that are considered to be law-based, as opposed to other options for dealing with harassment, such as therapy or counseling. Several legislative options at both the federal and provincial level, as well as within the workplace, are available to women in unionized workplaces in British Columbia.[6] The focal point of this thesis is unionized workplaces as a result of my personal experience and interest in unions' viability for women seeking redress for harassment. Thus, the bulk of the analysis in this thesis is placed on the options available to unionized employees in British Columbia. Since union grievance procedures in British Columbia are dictated by the British Columbia *Labour Relations Code* (1996) and related British Columbia Labour Relations Board procedures, this legislative option will receive the most extensive analysis. The British Columbia *Human Rights Code* (1996) and British Columbia Human Rights Tribunal, and other legislation that may be used to seek redress for harassment, although not specific to unionized workplaces, are also discussed. Workplace harassment and discrimination policies and collective agreements, including those of the participants when feasible, are examined.

Finally, explanation of the terms "sexual harassment" and "gender harassment" is required. In this thesis, the terms "sexual harassment" and "gender harassment" are used to refer to different phenomena, but are also used somewhat

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[6] These legislative options are outlined in Appendix C.

interchangeably and are often referred to simply as "workplace harassment." The thesis does not specifically address what is often called "personal harassment" in union collective agreements and workplace harassment and discrimination policies, as this type of harassment can be viewed as not generally motivated by gender. Behaviours that are sexual*ized* in nature, and that are generally viewed as constituting sexual harassment, such as the touching of a woman's breast, for instance, are behaviours that I would define, for purposes of this thesis, as "sexual harassment." However, the focus of my research is on what is referred to in this thesis as "gender harassment." Gender harassment includes behaviours that go beyond those generally thought to constitute sexual harassment, behaviours that are considered to be discrimination based upon one's gender (Aggarwal & Gupta, 2006). According to the decision in the groundbreaking case of *Bell v. Ladas* (1980, as cited in Aggarwal & Gupta 2006, p. 40) sexual harassment consists not only of "overt gender based activity," but of "more subtle conduct such as gender based insult and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment." In this thesis, this is the nature of the definition of gender harassment that will be utilized. Gender harassment is viewed as different from sexual harassment in the sense that it encompasses sex*ist* behaviours that may not necessarily be sex*ual* in nature.

Unfortunately, much of the literature related to sexual harassment does not distinguish between what I refer to in this thesis separately as sexual harassment and gender harassment, but lump both sexualized and non-sexualized discriminatory (sexist) behaviours together under the term "sexual harassment." This

may be a result of the fact that legal definitions of sexual harassment, in both Canada and the United States, have evolved over time to include discriminatory behaviours based upon one's gender (Aggarwal & Gupta, 2006), which were not necessarily initially incorporated in the definitions. However, possibly because the concept of gender (*cultural* aspects of what it means to be a man or a woman; Kimmel, 2004) is relatively recent, men and women are often still distinguished from one another according to the biological concept of "sex," which continues to be reflected in the literature and in definitions of sexual harassment.

According to the distinction made between sexual and gender harassment for purposes of my research, sexual harassment is incorporated within the definition of gender harassment. By utilizing the definitions of harassment in this way, a richer analysis of harassment as it relates to gender and power relations can be undertaken. Thus, any reference in this thesis to sexual harassment includes elements of gender, and both sexual harassment and gender harassment are often referred to simply as "workplace harassment." A more detailed description of the differences between sexual harassment and gender harassment or discrimination is contained in Chapter Two under the heading "Defining a Problem."

Purpose of Research

A. The Research Question

With regard to processes associated with legal options, what are the lived experiences of women who have attempted to achieve redress for gender-based harassment experienced in unionized nontraditional professional workplaces?

B. Research Objectives

The literature regarding the efficacy of legal redress options for sexual harassment in British Columbia, and indeed in Canada, is scant and outdated. A major function of this research is to summarize, evaluate, and make recommendations for improving the processes associated with legal options that women in nontraditional professional occupations can use to report harassment arising in British Columbia workplaces. It was anticipated that this goal would be accomplished by two methods. First, the legislative options available for addressing workplace gender harassment were critically analyzed, some to a greater degree than others, as already mentioned. Second, a qualitative research approach was undertaken in order to incorporate the lived experiences of research participants who had contemplated accessing one or more legal options related to reporting workplace harassment.

It has already been stated that a concise summary of legal options that might be accessed by women facing harassment in unionized workplaces in British Columbia, and the steps for filing complaints in accordance with those options, does not appear to exist. If this information was available, it might prepare women to make better-informed choices and assist them if they decide to report harassment. Providing this information in a manner that is accessible and understandable to working women is another key purpose of this research. Therefore, once an examination of reporting mechanism processes was completed, a booklet outlining useful information related to the legal options was compiled. This booklet will conceivably be of use to women seeking to resolve gender harassment experienced

in the workplace, as well as to bodies and policy-makers in a position to support those women. Further details regarding the booklet can be found in Chapter Five, under the heading entitled "Information Booklet." The text of the booklet is contained in Appendix H.

Outlines of Chapters Two, Three, Four, and Five

The methodological approach and methods used in this research study are contained in Chapter Two. In that chapter, the research goals and issues to be addressed by the research are explained. A discussion of feminist standpoint theory and the reasons for its selection for this research is included. The goals of the research, and the methods by which it was proposed those goals would be achieved, are delineated, and Linda Tuhiwai Smith's (1999, p. 143) "Twenty-Five Indigenous Projects" are introduced. Finally, in Chapter Two, the research focus is situated in an historical context.

The results of the literature review are presented in Chapter Three of the thesis, as are limitations on the scope and focus of the research. The importance of gender with regard to workplace harassment is discussed. In that chapter, the historical and structural context in which the legislative options exist is developed. Finally, in Chapter Three, the backdrop is placed for the analysis of the legislation to be undertaken in the two subsequent chapters, particularly Chapter Five.

Chapter Four contains a summary of the salient aspects of the legislative options and processes available for dealing with gender harassment in unionized nontraditional professional occupations in British Columbia. Workplace harassment and discrimination policies and union grievance procedures, including those of the

participants when feasible (this information was unavailable for all but one of the participants), human rights legislation, and other relevant pieces of legislation are summarized. For each legislative option, the following information is provided:

1. the title of the legislation and the legal body that hears complaints filed in accordance with that legislation;
2. the definition of sexual harassment or gender discrimination contained in the piece of legislation;
3. whether access to the legal option is limited to certain individuals (by virtue of being covered by a collective agreement, for instance);
4. the general procedures to be followed to initiate a complaint under the legislation;
5. if available, how support for complainants can be accessed (for instance, legal or advocacy assistance);
6. sections in the piece of legislation of significant interest to women filing harassment claims;
7. potential outcomes associated with using this legal option, and;
8. potential positive and negative aspects associated with utilizing the piece of legislation and associated procedures.

Chapter Five expands upon the summary material provided in Chapter Four. Chapter Five contains a discussion of the research findings in relation to the legislative options and processes available for dealing with gender harassment in unionized nontraditional professional occupations in British Columbia. Rather than containing formal research conclusions, this chapter incorporates the experiences of

the individual research participants with regard to the legislative analysis, consistent with feminist standpoint theory. Participants' responses are organized into themes that emerged, and points of divergence are identified. An information booklet (Appendix H) for women contemplating filing harassment claims in British Columbia is produced as a result of the analysis undertaken in Chapters Four and Five. Finally, in this chapter, recommendations arising from the research study and suggested "next steps" are conveyed.

CHAPTER TWO

THEORETICAL AND METHODOLOGICAL APPROACHES

The research goals and issues to be addressed by the research are outlined in this chapter. A discussion of feminist standpoint theory and its selection for this research is included. In Chapter Two, the goals of the research, and the methods by which it is proposed those goals will be achieved, are delineated. Linda Tuhiwai Smith's (1999, p. 143) "Twenty-Five Indigenous Projects" are also introduced in this chapter. Finally, in Chapter Two, the research focus is situated in an historical context.

Defining a Problem

As mentioned in Chapter One, defining sexual harassment is problematic. Since sexual harassment was first conceived of in law, the definition has expanded (Aggarwal, 1992; Aggarwal & Gupta, 2006). Presumably, then, this opens the door for additional behaviours to be included and for the definition to evolve. The legal precept that sexual harassment is considered to be discrimination on the basis of gender (Aggarwal, 1992) is extremely important, not only to this research, but to women seeking resolution for harassment. This precept has enabled tribunals and courts to interpret legal definitions in a manner that incorporates non-sexual behaviours on grounds that they constitute discrimination on the basis of gender or "sex-based harassment" (Aggarwal, 1992, p. 116; Browne, 2002). Sex-based harassment is defined by Aggarwal (1992, p. 116) as "harassment not involving sexual activity or explicit sexual language but nevertheless causing harassment if it is 'sufficiently patterned or pervasive' and directed at employees because of their

sex, and is prohibited by the human right statutes." The concept of a "poisoned work environment" has developed from legislative decisions, in which "[t]he creation of an offensive or hostile work environment through sexual harassment can by itself constitute a violation of human rights statutes" (Aggarwal, 1992, p. 113; Schneider, 1991). For instance, in *Shaw v. Levac Supply Ltd.* (1991, as cited in Aggarwal 1992, p. 117), the complainant was subjected to being called "fridge sister" and "fat cow." This behaviour was considered by the court to be "verbal conduct of a sexual nature" and constituted harassment because it "was repetitive and had the effect of creating an offensive work environment" (Aggarwal, 1992, p. 117).

This expanded definition benefits women in some ways, such as providing them with the option to take a complaint to the British Columbia Human Rights Tribunal, but it still fails to get at the nuanced differences between what are referred to in this thesis as sexual harassment and gender harassment (discrimination on the basis of gender). Consider the following quote from Harris and Firestone, which is with reference to sexist military men who are of the opinion that women do not belong in the military. The passage not only demonstrates the difference between blatant sexual behaviour that many tend to think of when thinking of sexual harassment (Aggarwal & Gupta, 2006) and gender harassment or sexism (discrimination on the basis of gender), but also illuminates the types of, for the most part masked, behaviours that subjugate women in the workplace (Harris & Firestone, 1997, p. 162):

> In the minds of such men, it is clear that woman [sic] do not fit the role of soldier. This perception can then become a justification for such subtle forms of harassment as ignoring women, assigning them meaningless tasks, and refusing to teach them necessary skills for

> their assignments, all of which can have serious negative consequences for a woman's career.

The understanding of sexual harassment that is utilized in this thesis to the greatest extent possible when analyzing and critiquing current legislation takes gender discrimination into account, as this concept more appropriately addresses the foundation of the problem. This understanding of sexual harassment is consistent with the definition of "gender harassment" which "involves generalized sexist comments and behavior that convey insulting, degrading, and/or sexist *attitudes*" (Fitzgerald, Gelfand & Dragow, 1994; Fitzgerald & Hesson-McInnis; both cited respectively in Stockdale, 1996, p. 6; emphasis added). Aggarwal and Gupta (p. 2) add "[s]exual harassment does not have to be sexual in nature. It can also mean that *someone is bothering you simply because you are a man or a woman.*" Several legal scholars take note that sexual harassment is related to power. Law professor Nadine Taub (1979) opines that "[u]nreciprocated sexual advances . . . are exercises in male power and reminders of women's inferior status and traditional role as sexual object" (as cited in Weisberg 1996, p. 725). According to Aggarwal (1992, p. 1), "[w]hether it is from supervisors, co-workers, or customers, sexual harassment is an attempt to assert power [sexual or otherwise] over another person." Sexual harassment definitions incorporating the notion of gender discrimination illuminate not only the power imbalance articulated in the interactions between the woman being harassed and her harasser, but between men and women generally. It is for this reason that the historical treatise is provided in Chapter Three. Carr et al. (2004, p. 18) conclude that their study "supports the supposition that the power relations of the dominant society, which accord men more power than women, are reflected in

the workplace," an assertion which further buttresses the decision to utilize an historical perspective in the thesis. Employing a definition of sexual harassment that incorporates the concept of gender permits acts that are of a sexual nature to be encompassed in the research without restricting the focus to such behaviours.

Although it is useful to recognize the definitions of sexual harassment as contained in the respective pieces of legislation, as they provide a reference point for the purpose of the legislation and have an impact on whether a woman has a right to file a complaint in accordance with that particular legislation, for purposes of this research it is problematic to place too much emphasis on such definitions. First, simply because some acts perpetrated against women and men may not appear to fit within a particular legal entity's definition of harassment does not mean that the behaviours are not harmful (Wilson, 2000). Two of the research participants in this study commented that they were uncertain about whether their experiences constituted sexual harassment in the legal sense, but the hurt they suffered as a result of their experiences was palpable. The usefulness of legal definitions is not necessarily found in their reflection of mainstream beliefs about the harmfulness of the behaviour, but because they are required by the law in order to dictate how the law will be used (Cordozo, 1924, as cited in Bracey 2006). Second, simply because a woman does not feel that, or is not certain whether, her situation meets the definition contained in the legislation does not necessarily mean that her complaint will not be successful. Women may have conventional understandings of what behaviours comprise sexual harassment (Wilson, 2000), not suspecting that gender discrimination may often be covered in such definitions. Although the participant

making the following comment has since become well aware of the types of behaviour covered in definitions of sexual harassment, she may not have been at the time she experienced the harassment (Participant 1):

> You know, I saw sexual harassment as somebody saying, "OK, well, you're not going to get promoted unless you sleep with me." Right? That's how I saw sexual harassment, so I don't know that I would have called it, and I still don't know that I would call it, necessarily — sexual harassment's used very broadly. I would be more inclined to express what I experienced as gender discrimination, which is what I felt it was, right? I was discriminated against because I was a woman.

This participant also noted that the man who harassed her referred to women as "clams" and "beavers." In accordance with the decision in *Shaw v. Levac Supply Ltd.* (1991, as cited in Aggarwal 1992, p. 117), it is certainly possible that verbal conduct of this nature would have been considered by a judge or other agent to constitute sexual harassment. This example demonstrates that, although a woman may be of the belief that what has been perpetrated against her does not meet a legal definition of sexual harassment, which may in turn influence her decision to forego proceeding with a claim, her belief may be mistaken. The definitions contained in the legislation are legally complex and open to interpretation by adjudicators. Reading a decision of the British Columbia Human Rights Tribunal or an arbitration decision of the British Columbia Labour Relations Board will give one an idea of the legal precedent and tenets relied upon in making such determinations.

Aggarwal (1992) and Aggarwal and Gupta (2006) outline the legalities associated with ascertaining whether a particular situation meets a legal definition of sexual harassment or gender discrimination, which are complex. These authors add that "[t]he credibility of witnesses is more crucial in sexual harassment cases than in

any other type of discrimination case because, as a general rule, sexual encounters do not occur openly in public" (Aggarwal & Gupta, p. 62). Thus, because gender harassment often occurs in private, the ability of the complainant to articulate what happened to her may have an impact on the decision about whether the behaviour inflicted upon her meets a legal definition of sexual harassment. Except perhaps for its pertinence to a claim's likelihood of success based on meeting a legal definition of harassment, which is not explicitly examined, the analysis of the legislative processes undertaken in this thesis is not reliant upon whether the situations the participants experienced met those definitions. For this reason, and those stated above, the legal definitions of sexual and gender harassment contained within the legislation to be examined are not a major focal point for analysis as might otherwise be expected in the undertaking of an examination of legislation. There are, however, reasons that legal definitions are important, which are discussed in Chapter Five under the heading entitled "Clarifying and Communicating Definitions of Harassment and Discrimination in Workplace Harassment and Discrimination Policies and Other Legislation."

Theoretical, Methodological, and Paradigmatic Approach

As mentioned, the research for this thesis was designed to examine the lived experiences of women who have attempted to achieve redress, through legislative means, to gender-based harassment faced while employed in unionized nontraditional professional workplaces. In order to undertake this research, a qualitative research approach was applied, and the research was undertaken from within both "interactive" and "critical" paradigms (Park, 1993, as cited in Kirby,

Greaves, & Reid 2006, p. 14), incorporating feminist standpoint theory. In the text written by Kirby et al., it is noted that two of the major tenets of the "interactive paradigm" are that knowledge is based on "lived experience" (Park, 1993, as cited in Kirby et al. 2006, p. 14) and that "[w]hat exists is what people perceive to exist" (Kirby et al., p. 14). Obviously, this statement takes constructivism to an extreme. I acknowledge fully the prospect that objective realities exist beyond what I perceive to exist. However, using the legislation being examined as an example, I also submit that my perceptions about how the legislation works is bound to influence the manner in which I approach the legislation and the degree to which I feel it may be useful. In an attempt to understand Park's position, I consulted his work. Unfortunately, I was unable to find evidence of Park making use of the phrase or providing further explanation of the basic elements of an "interactive paradigm." Nonetheless, I do believe that perception is important. As mentioned, regardless of whether the law could provide resolution, some women may not proceed with filing complaints as a result of their *perception* that their situation does not constitute sexual harassment or that they will not achieve results (Wilson, 2000). In the absence of clarifying details or evidence, perception must be relied upon to some extent. As a result, women's perceptions (including my own) of how the legislation functions are important, as they may influence the manner in which one proceeds, thereby producing tangible outcomes. For purposes of this thesis, then, the "interactive paradigm" (Park, 1993, as cited in Kirby et al., p. 14) is utilized in the sense that women's personal experiences and perceptions associated with dealing with harassment are at least as important to my research as is the written legislation,

and that without the participants' contributions this research could not be considered to have been undertaken properly.

Given the myriad possible variables impacting a woman who is harassed in the workplace and who seeks redress for that harassment, it would be impossible to pinpoint which of, and how, those variables affected the woman's perception. What I felt was important to discover was, regardless of how the legislation appears on paper, how each participant perceived the usefulness of the legal options and their associated procedures. This component, as well as giving the participants a voice in the research, was vitally important to this thesis. As Schafran (1997, p. 217) points out, "for women, achieving credibility in and out of the courtroom is no easy task." It is crucial to provide an opportunity for the words and experiences of the participants to be taken as credible. While ensuring that, in the process of seeking input from the participants, the opportunity was provided for them to voice their experiences and be taken as credible in doing so, it was also desired that the characteristics of "allies" (Bishop, 2002, p. 111) were relied upon. I deliberately attempted to incorporate to the greatest extent possible some of the more specific characteristics of allies (Bishop, p. 111; emphasis added), such as "their grasp of 'power-with' as an alternative to 'power over,'" and "their understanding that good intentions do not matter if there is no *action* against oppression." It is hoped that these elements of an interactive perspective are reflected in the methodology, the analysis, the booklet, and most importantly my interactions with the research participants.

The second paradigm to be incorporated in this study is the "critical paradigm," which is "founded on reflective knowledge" (Park, 1993, as cited in Kirby

et al. 2006, p. 14). The critical paradigm "examines societal structures and power relations and how they play a role in promoting inequalities and disenabling people while promoting reflection and action on what is right and just" (Raphael, 2000, as cited in Kirby et al. 2006, p. 14). As the creation and administration of law is a cultural endeavour (Bracey, 2006) and has been suggested to be an enterprise that has been dominated by men in most respects (Aggarwal, 1992; Baer, 1992; MacKinnon, 2005), I deemed it necessary to undertake the examination of the legislation from within a critical research paradigm (Park, 1993, as cited in Kirby et al.). I viewed taking a critical approach as necessary because, as Bracey suggests "the question of whose assumptions, values, and behaviors become enshrined in law is a question of the distribution of power and the workings of the legal process" (p. 3). She adds "looking at the relationships among law, assumptions, values, and the allocation of power is looking at law in its *cultural context*" (p. 2; emphasis in original). At least partly for this reason, a discussion of history, patriarchy and hegemonic masculinity as they relate to the workplace are undertaken in Chapter Three. As Kirby et al. (p. 14) assert, "[p]ower issues are central for all research originating from a critical paradigm."

Both the interactive and critical paradigms are consistent with feminist research practices (Kirby et al., 2006), as is the reliance upon standpoint theory. Standpoint perspective was chosen because designing research studies from the points of view of those in marginalized positions, relative to the dominant members of society, may contribute more significantly to the body of knowledge known as "science" than is the case with positivist approaches (Harding, 1993; Hartsock,

2003). This richer contribution is possible as a result of the fact that, according to feminist standpoint theory, those in the position of being oppressed have a form of double vision (Narayan, 2003) resulting from the "need to understand not only themselves but also the dominant group" (Oakley, 1993, as cited in Kirby et al. 2006, p. 37). Harding (pp. 53-54) states that "[t]he intellectual history of feminist standpoint theory is conventionally traced to Hegel's reflections on what can be known about the master/slave relationship from the standpoint of the slave's life versus that of the master's life." This is one of the tenets of standpoint feminism, that those in marginalized positions have a unique view of the societies in which they live as the result of having to navigate both their own worlds and the worlds of their "masters" (Hartsock). It is important to note that I am speaking in generalities here, as women are by no means immune to oppressing others (Bishop, 2002). In any event, Harding (p. 56) explains how practicing science from the standpoint of the marginalized could contribute to a much richer body of knowledge:

> Standpoint theories argue for "starting off thought" from the lives of marginalized peoples; beginning in those determinate, objective locations in any social order will generate illuminating critical questions that do not arise in thought that begins from dominant group lives. Starting off research from women's lives will generate less partial and distorted accounts not only of women's lives but also of men's lives and of the whole social order.

Harding's position is that forming coalitions in research is of benefit to both the dominant and marginalized groups, as doing so "challenges members of dominant groups to make themselves 'fit' to engage in collaborative, democratic, community enterprises with marginal peoples" (p. 68). The methodology recommended by Harding and others espousing the standpoint approach is an alternative to the

practice of science from the standard objectivist method. Practicing these alternative approaches requires that the researcher situate the research question socially and historically in accordance with feminist standpoint theory (Harding; Hartsock; Kirby et al.), which is the approach that has been taken here.

Epistemologically, the views of the participants are critically important to this research. An analysis of the legal options available to women is deficient without the input of the women who have attempted to make use of them. In addition, it is important to ensure that women who are victimized or oppressed by workplace gender harassment are provided with the opportunity to impart their voices and experiences into the discourse (Seagrave, 1994). As Seagrave (p. vi) notes, "[t]he exploited and abused rarely get to participate in the writing of history, a task usurped by the exploiters and abusers." In this research project, although I am in some regards participating in what Smith (1999) refers to as insider research as a result of having experienced workplace harassment and considered pursuing resolution, I am an outsider in the sense that I did not experience harassment based upon my gender nor was I employed in a nontraditional workplace. Thus, I could not have undertaken this research without the contributions of the participants, and it is my hope that they, too, received something of value by participating in this research experience.

Since the findings of this study are based on individual experiences impacted by any number of variables, they may not be generalized to include all women in all workplaces. It is important that this be remembered when digesting the analysis and recommendations. However, patterns that might be identified between research

participant accounts are important (Harding, 1993). Common threads evident across responses and research studies may eventually point to "conclusions" that cannot be discovered when working from the centre to the margins (extrapolating from conclusions reached in one study to other situations), as is often the case in traditional scientific research. Further research, both quantitative and qualitative, could then be undertaken to illuminate these patterns or common threads.

Detailed Research Goals and Methods

The research goals of this thesis are threefold:

1) To critically analyze and evaluate, from a feminist theoretical perspective, the efficacy of procedures associated with legal redress options designed to address gender harassment.
2) To provide a document that outlines, clearly and concisely, information regarding legal options available to women considering seeking redress for harassment in the workplace.
3) To accomplish the first two goals with the inclusion of the contributions of the research participants.[1]

The research methods used to undertake the tasks associated with the three research goals are multiple and varied, a style recognized as a bricolage approach (S. Transken, personal communication, March 2008). The methods outlined below were used to achieve each research goal.

[1] As mentioned previously, three women participated in this research study.

A. First Research Goal: Analysis of Processes Associated with Legal Redress Options

In accordance with the literature review undertaken, results of which are outlined in Chapter Three, the legal options available to women seeking redress for sexual harassment in the workplace in British Columbia are critically analyzed from a feminist theoretical perspective. The primary concentration of this analysis is placed on the procedures associated with the legal options. The options to be examined include "internal" (Carr et al., 2004) reporting mechanisms found within the workplace, namely one's union grievance procedures and the employer's sexual harassment and discrimination policies[2], as well as "external" (Carr et al.) reporting options, mainly the British Columbia Labour Relations Board and Human Rights Tribunal. Informed by the literature review, the processes related to each of the legal options were examined in detail. By reviewing the legislation in advance of interviewing the participants, areas of possible concern in the legislation and processes were identified so that particular attention could be paid to these areas during the interviews. The analysis of the legislation was undertaken with reliance upon an historical and structural perspective as will be discussed in Chapter Three, using the paradigms outlined previously in this chapter. The findings of the evaluation of the legislation are contained in Chapters Four and Five, as well as in

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[2] Although it was initially intended that the analysis include the workplace collective agreements and harassment policies that were in effect at the time the participants were seeking redress for their harassment, in two cases these were unobtainable. The policy in the workplace of the woman who did use this option was very limited, as it contained no procedures for making use of the rights enshrined in the policy, thus providing no basis for analysis of her experience with the policy processes. As a result of these factors, it was therefore decided that commentary would be provided on workplace harassment and discrimination policies, and collective agreements, in general.

Appendix D and the booklet that was developed in accordance with the second research goal (Appendix H).

B. Second Research Goal: Production of a Booklet Outlining Legal Redress Options

Using the analysis of the legislation and associated procedures obtained when undertaking the first research goal, as well as my experience working with a union, a booklet was created containing information regarding the legal options available to women who are harassed in the workplace. Information in the booklet was drawn from the legislation and its analysis, which is summarized in Chapter Four and discussed in Chapter Five. Comments and suggestions from the participants are also incorporated. Some of the information contained in the booklet is based on the analysis contained in Appendix D ("Analysis of the British Columbia *Labour Relations Code* (1996) and British Columbia Labour Relations Board Procedure"), information that may not necessarily be presented in the body of the thesis.[3] The desire is to seek agreement for placing this booklet in union, human resources, and counseling services offices, as well as other locations where women might benefit from the information it contains. Thus, prospects for publishing and disseminating the booklet will be investigated.

C. Third Research Goal: Inclusion of Research Participants as Active Contributors to the Research Project

Although this study depended in large part upon the input of the participants, it was also an express purpose of this study to provide the participants with the

[3] It would have been impossible to include all aspects of the critical analysis of the legislation in the body of the thesis, but I felt it important that my full critique be made available to the reader.

opportunity to "recount" (Smith, 1999) their experiences in a supportive setting. Inclusion and action are central to collaborative research (Kirby et al., 2006). Thus, it was the intention that, consistent with the "interactive paradigm" (Park, 1993, as cited in Kirby et al. 2006, p. 14) mentioned previously, this research be action-based (Kirby et al., p. 17) and undertaken with the contributions of the participants to the greatest extent possible. Barnsley and Ellis (1992, as cited in Kirby et al. 2006, p. 44) recommend that "in the case of women, collaborative researchers attempt to develop strategies and programs based on real life experiences rather than theories or assumptions and to provide an analysis of issues based on a description of how people actually experience those issues." Approaching the research in this manner was important. Although the methodology was outlined previously in this chapter, it bears repeating that I embarked upon this research project with the precise intent of helping women who face harassment in the workplace. This research project could not have been undertaken without the selfless contributions of the participants. Gordon (2001, as cited in Kirby et al. 2006, p. 44) asserts that "[a]ction is an integral part of reflective knowledge, and it can be conceptualized as speaking, or attempting to speak, to validate one's self and one's experiences and understandings in and of the world." The research methods utilized for this thesis were developed in a manner that attempted to incorporate these ideas. As a result, I learned a great deal from the participants and obtained validation about my own experience of harassment in the process.

In addition, as already mentioned, Smith's (1999, pp. 143-161) "Twenty-Five Indigenous Projects" were also relied upon.[4] Smith's "Indigenous Projects" focuses on employing action in research, such as "claiming," providing "testimonies," "story telling," "celebrating survival," "remembering," "intervening" (which "takes action research to mean literally the process of being proactive and of becoming involved as an interested worker for change"; p. 147), "reframing," "restoring," "networking," "protection," and "sharing," among others. The importance of this aspect of the research was explained to the participants, and every effort was made to create the supportive and empathetic atmosphere that would allow for these potentially healing opportunities to take shape.

It seems that a key component of valuing women's contributions in the workplace would be to ensure that, if women are not protected from harassment, they at least are provided with the information and support necessary to obtain resolution. It is apparent to me, from my personal experience and from reading the literature in this regard, that this is often not the case. Not only are women oppressed when they are subjected to harassment, but they are further exploited if their employer, union and other bodies that are in a position to offer assistance do not actively attempt to do so. Obviously the issue of funding is a concern, but if women were truly valued, one could picture the availability of solutions to workplace harassment, such as the establishment of a "harassment hotline" or agency that women could access for direction (Carr et al., 2004). Agencies exist that could provide this information, but the responsibility falls upon women to ascertain where

[4] See Appendix E for a list of Smith's "Projects" (twenty-two of twenty-five) that I felt could have significance to this research study. My very brief ideas of the relevance of the Projects to the thesis methodology are indicated in brackets after each Project.

they can obtain help, and once they have cleared that hurdle, to wade through a mountain of legalistic jargon to figure out how to access it. Thus, it seems that when a supervisor, union, or government agency cannot or will not protect women from harassment, failing to subsequently provide women with the tools necessary to address workplace gender harassment places these women in a position of being power-*less*[5] in relation to another person or institution that has "power over" (Bishop, 2002) them.

Offering the participants an outlet to express their concerns regarding the processes I suspected they might have faced in attempting to obtain resolution for harassment was mainly what attracted me to Linda Tuhiwai Smith's (1999, p. 143) "Twenty-five Indigenous Projects." I viewed the application of the values associated with Smith's "Projects" as a way to provide those who participated in this research study with the opportunity to talk about their situations in an understanding and supportive environment, possibly bringing them at least a small measure of resolution for the injustices they had experienced. Therefore, it was Smith's "Projects" that influenced my decision to permit women who had not filed a claim in a legal arena to participate in this research project, apart from the fact that they, too, have valuable information to impart. I was of the opinion that these women should be provided the opportunity to recount their experiences, despite not necessarily having filed a formal harassment complaint, and that the information they could

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[5] I hyphenate the word powerless to draw attention to the fact that to be powerless does not necessarily equate to a complete and utter lack of power, but rather the state of holding *less* power in relation to someone else. Perhaps highlighting the word in this way will remind people in situations where they are oppressed that they may be able to assert their personal power to some extent, although obviously this will be dependent upon the circumstances. It is also hoped that emphasizing the fact that power is relational might remind those in positions of power in particular situations to exercise that power carefully and refrain from using "power over" (Bishop, 2002).

supply would also be useful to an understanding of legislative processes. I attempted to provide the research participants, including myself, with as many opportunities as possible to participate in the actions delineated in Smith's (1999) "Projects" when taking part in this research study. The value of the use of Smith's "Projects" was not evaluated in this research, such as with the use of an exit interview with the participants, for example. However, the "Projects," along with Bishop's (2002) description of an "ally" (discussed below) both profoundly informed my approach to the research and my comportment with the participants.

Working from a position of being an "ally" (Bishop, 2002) to the participants, and partly as an insider researcher (Smith, 1999) from within an action research framework (Kirby et al., 2006; Smith), I interviewed[6] three women who are currently, or were previously, employed in nontraditional professional occupations, and who contemplated pursuing gender harassment claims. Two individuals, having heard about this research project by word of mouth, had indicated their interest in participating early on. Further participants were sought based on media accounts outlining the harassment they experienced while employed in nontraditional professional occupations. Unfortunately, the only person I was able to contact directly in this regard declined to participate.

Additional participants were subsequently sought by requesting to place information with employers and union offices in Prince George and elsewhere in British Columbia in an attempt to reach firefighters, engineers, carpenters, conservation officers, forestry workers, police officers, hospital employees and other

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[6] The interview protocol and questions are provided in Appendix F.

professional women employed in unionized nontraditional occupations. The flyers placed in the community, along with follow-up telephone contact, failed to attract a single participant. This may be a reflection of the fact that, as mentioned, very few women file harassment complaints, making the sample population small to begin with. In addition, the limitation of the research to women employed in unionized nontraditional professional occupations narrowed the population even further. I had not expected attracting research participants to be so difficult. In any event, the third participant also became aware of the research study by word of mouth. Prior to being interviewed, informed consent was obtained from the participants. They were informed that their responses would be anonymous and confidential and that they were free to withdraw from the study at any time, and that if they chose to do so, all information related to their participation would be destroyed.

The interviews were semi-structured (Kirby et al., 2006; Smith, 1999), and were digitally recorded and transcribed. The interview questions were set in advance, but further questions were posed as appropriate to obtain clarification from the women being interviewed or to follow up a particular line of conversation. The interviews ranged in length from thirty-five to fifty-five minutes. Somewhat consistent with a collaborative action research approach (Kirby et al.; Smith), the interview process was iterative, with the participants having the opportunity to review and edit their interview transcripts and provide input throughout the research process. Most importantly, the participants' reported experiences were utilized to inform the analysis of the legislation and the booklet creation undertaken in relation to the first

and second research goals, respectively. Each research participant will receive a bound copy of the thesis.

The Methodological Importance of Situating the Research in an Historical Context

Utilizing a participatory and collaborative research approach requires that one take into account the historical context in which oppression (in this case, in the form of gender harassment) occurs (Kirby et al., 2006, p. 31):

> Collaborative research has traditionally been understood as originating from participatory, action, and feminist research approaches. Critical theory and knowledge underpin all of these traditions, combining self-reflection and a historical analysis of inequitable systems.

A brief overview of this historical context is provided here, and expanded upon in the next chapter. Historically, the view that men and women are different from one another biologically is longstanding (Browne, 2002; Butler, 1990). It has often been contended that, because of these biological differences, men and women are naturally suited to different labour tasks (Kimmel, 1996; Reskin & Padavic, 1994). Although this binary opposition of men and women has been contested by other feminist scholars (for instance, see Butler, 1990), the idea that women in general have historically been the oppressed sex / gender in many ways is undeniable. Roles of women in the workplace have been influenced by general notions of the value of women and their place in relation to (below) the majority of men (Browne; De Beauvoir, 1952/1989; Forrest, 1993; Kimmel, 1996; Reskin & Padavic).

Labour roles of men and women have been divided based upon sex (Kimmel, 1996; Levit, 1998; Reskin & Padavic, 1994). The claim has been made that because women are, biologically speaking, the reproducers, they are naturally suited for

child-rearing and other tasks contained within the household (Johnson, 1997; Kimmel, 1996). Based on this argument, if women are equipped to remain in the home and care for the family, then it is only "natural" that men work outside the home and earn the wages (Forrest, 1993; Kimmel, 1996). This gendered expectation influenced trade unions to utilize the argument that married women working outside the home were driving up competition for wages (Pateman, 1998; White, 1993), and precipitated unions negotiating for wages large enough to permit men to support not only themselves, but their families. This concept was known in the welfare state as a "family wage" or "living wage" (Creese, 1999; Forrest; Haywood & Mac an Ghaill, 2003; Pateman, 1998; White, 1993). The institution of the family wage established the expectation that only men were permitted to assume the role of "breadwinner" (Creese; Ehrenreich, 1984; Forrest; Kimmel, 1996) and served to further widen the chasm between the public sphere of the male workplace and the private sphere of the home where women were expected to remain (Creese; Forrest; Kimmel, 1996; White).

Labour became gender-segregated (Creese, 1999; Haywood & Mac an Ghaill, 2003; Kimmel, 1996) as a result of the nature of the labour associated with the occupation, with tasks being defined dichotomously as "skilled/unskilled, heavy/light, dangerous/less dangerous, dirty/clean, interesting/boring" (Haywood & Mac an Ghaill, p. 22). Haywood and Mac an Ghaill (p. 22) suggest that "these oppositions work together...to establish the gendered nature of work and its symbolic value." The authors' reference to *symbolic* value is important. Kleinman (1996, p. 129; emphasis in original) submits that:

> Many signs and objects are culturally coded as masculine or feminine. Pit bulls, pickup trucks, and the color blue are coded masculine; poodles, scooters, and the color pink are coded feminine. Even such seemingly gender-neutral terms as "professional" and "bureaucracy" have masculine connotations. This sort of gender coding is not simply descriptive, but *evaluative*. In a society in which being male is regarded more highly than being female, typifying an object by gender renders it strong or weak, legitimate or illegitimate . . . . The link between maleness and authority is similar to the link between ice and cold.

Given this line of reasoning, it is not difficult to see how professional occupations could have become "coded masculine," and how women attempting to enter those occupations are doubly challenged.

Only recently, in terms of history, have women begun to enter some professional occupations that previously remained nearly exclusively the domain of men (Epstein, 1971). Despite women's limited advancement into these occupations, women who are working to provide for their families, the idea lingers that men are (and should be) the sole breadwinners who financially provide for their wives and children, and labour roles continue to be segregated according to gender (Cockburn, 1991; Geoffroy & Sainte-Marie, 1971; Kimmel, 1996; Reskin & Padavic, 1994). In fact, Kimmel (2004, p. 184) contends that "while the realities of home and workplaces have changed, our ideas about them have lagged far behind. Many American [sic] still believe in the 'traditional' male breadwinner/female housewife model even if our own lives no longer reflect it . . . ." According to Kimmel (1996, 2004) and others (Browne, 2002; Cockburn) the workplace has been a site for the establishment and maintenance of masculinity, in and for which men are expected to, and do, compete against one another: "[w]orking enabled men to confirm their manhood as breadwinners and family providers (Kimmel, 2004, p. 184). Thus, the

impetus existed, and continues to exist, for men to exclude women from the workplace at least partly in order to assert their male authority and protect their sense of masculinity (Browne; Cockburn; Geoffroy & Sainte-Marie, 1971; Kimmel, 1996; Kleinman, 1996; Stinson & Richmond, 1993). Present-day notions of masculinity continue to be inextricably bound up with the notion of the "family wage" and the breadwinner role (Cockburn; Haywood & Mac an Ghaill, 2003; Kimmel, 1996; Levit, 1998; Reskin & Roos, 1990).

To summarize, at least somewhat as a result of the family wage concept, the workplace has historically been a site for the establishment and preservation of masculinity (Kimmel, 1996, 2004). Labour is divided, and occupations are coded, according to gender expectations (Haywood & Mac an Ghaill, 2003; Kimmel, 1996; Kleinman, 1996). Women who attempt to penetrate nontraditional workplaces may be perceived as what Simone de Beauvoir (1952/1989) describes as "others." Kleinman (p. 131) adds that "masculinity is an asset only if attached to men." As a result, some men seem to feel threatened by the entry of women into the workplace and consequently treat their female co-workers, either overtly or covertly, with contempt (Cockburn, 1991; Geoffroy & Sainte-Marie, 1971; Kimmel, 1996, 2004; Reskin & Padavic, 1994; Reskin & Roos, 1990). Gender harassment is one expression of the contempt some men show toward women, and some men, in nontraditional workplaces. As indicated in the first chapter of this thesis, men are open to inclusion in this gendered analysis. For instance, Epstein (1997) asserts that sexual harassment is a means of enforcing gender roles, namely heterosexuality, a notion which could be expected to impact both women and men who fail to meet

society's expectations for what Judith Butler (1990) describes as "performing" one's gender. The issue of sexual harassment or gender discrimination in relation to men aside, harassment is but one tool in an arsenal, a tool that is used in the workplace, predominantly by men (Aggarwal, 1992; Browne, 2002; Cockburn; Levit, 1998) to dominate, oppress, exclude, and devalue their female co-workers (Browne; Walby, 1986, as cited in Cockburn 1991). In Chapter Three, the historical framework that has been sketched out here is expanded, as it is constructive for informing the analysis of the legislation undertaken in Chapters Four and Five.

CHAPTER THREE

SITUATING THE RESEARCH: GENDER AND HISTORY AS THEY RELATE TO WORKPLACE GENDER HARASSMENT

The literature related to sexual harassment is introduced in Chapter Three, and limitations on the scope of this thesis are outlined. The backdrop will be placed for the analysis of the legislation initiated in the next chapter. The importance of the concept of gender, particularly masculinity, is discussed as it relates to gender harassment in the workplace. For instance, the typical organization of the 1940's to 1960's, as well as more recent parallels, will be provided as examples of the means by which workplaces perpetuate patriarchy and allow for the expression and maintenance of masculinity. The influence of hegemonic masculinity on the workplace cannot be disregarded (Cheng, 1996). Rather than workplace harassment being simply a matter of discrimination or oppression of women, men's attempts to maintain the workplace as a site for the expression and maintenance of masculinity (that is, what it means to be a man) has had, and continues to have, an effect on women's work (Kimmel, 1996, 2004). It has influenced whether women are permitted to enter certain workplaces or occupations (Cockburn, 1991; Kimmel, 2004), how they are treated once they gain entry (Cockburn, 1991; Kimmel, 2004), and how the law responds to gender harassment or discrimination inflicted upon women in the workplace (Carr et al., 2004; Cockburn). For the purpose of demonstrating as clearly as possible the impact of masculinity on workplace gender harassment, nontraditional professional occupations were chosen as the sites for analysis in this thesis.

Review of Literature

In the general assessment with which the literature review was begun, it was discovered that sexual harassment in the workplace is a widespread problem in both the United States and Canada (Aggarwal, 1992; Aggarwal & Gupta, 2006; British Columbia Federation of Labour, 1980; Carr et al., 2004; Gruber, Smith, & Kauppinen-Toropainen, 1996, as cited in Harris & Firestone 1997; Harris & Firestone, 1997; MacKinnon, 2005). Social science surveys suggest that from eighty to ninety percent of women have experienced harassment at some time during their careers, with fifty percent of women indicating they are being harassed at work at any given time (Martin, 1989, as cited in Harris & Firestone 1997). In the process of researching the topic of sexual harassment in the Canadian context, only three reports were found. Two of these reports were outdated, created from comprehensive research studies undertaken in Canada in 1980 and 1983. These reports were authored by the British Columbia Federation of Labour Women's Rights' Committee and Women's Research Centre (1980) and the Canadian Human Rights Commission Research and Special Studies Branch (1983). A third qualitative research study, completed by Carr et al. in 2004, included detailed responses from seventeen interviews and twelve focus groups. The quantitative survey undertaken by the Canadian Human Rights Commission (p. 23) found that "1.2 million women...believe they have been sexually harassed."

Sexual harassment has deleterious effects on women in a number of ways (Aggarwal, 1992; Carr et al., 2004; British Columbia Federation of Labour, 1980). The British Columbia Federation of Labour study (1980) noted some of the effects

on women, which include feelings of anger, embarrassment, degradation, frustration, powerlessness, humiliation, fear, disgust, insult, and guilt. Other respondents in the British Columbia Federation of Labour study (p. 22), as well as in the report by Carr et al. (2004), indicated that they had been labeled as "trouble-makers" for having reported incidences of harassment. In its 1983 survey, the Canadian Human Rights Commission found that those who felt they had been sexually harassed were more likely than those who did not feel they had been sexually harassed to experience "serious consequences such as loss of employment and physical and emotional distress . . . as a result" (p. 25). According to a survey referred to by Aggarwal (Sandroff, 1988, as cited in Aggarwal 1992, p. 3), approximately ten percent of women harassed quit their jobs as a result of the harassment, and "50 per cent try to ignore it." Carr et al. found that the research participants involved in their study responded in similar ways to sexual harassment encountered in the workplace. Experiencing negative consequences as a result of being sexually harassed in the workplace is a common and disturbing theme in the literature. Similarly, the women who participated in the research for this thesis suffered serious consequences, consistent with those noted in other research studies. In reviewing the literature and media accounts, it seemed that women did not obtain appropriate resolution for the harassment they experienced in the workplace (Carr et al., 2004). Harris and Firestone (1997, p. 155) conclude that "legal barriers notwithstanding, harassment continues to negatively affect women in a variety of countries, organizational settings, and hierarchical positions in organizations."

Stockdale (1996, p. xi) stresses that "a multidisciplinary approach is essential to a full understanding of the situation of working women. Progress will be made more readily if economists understand what historians have learned, for example, or if psychologists learn about the findings of management professors." This statement initially guided the setting of the parameters for the literature review for this project. However, a vast amount of literature exists with regard to harassment in the workplace. Although the importance of approaching the examination of sexual harassment in a multidisciplinary manner is acknowledged, limitations were eventually placed on the review in conjunction with the formation of the research question. Issues such as organizational behaviour, psychological components of harassment, and the impact of harassment on employers were subsequently not examined. The focus was eventually narrowed to examining women's experiences of seeking information regarding the process of filing a complaint, and the procedures they encountered when attempting to do so.

Efforts were made to review literature on gender harassment, and legal options for addressing it, specifically in the Canadian context. Unfortunately, it seems that very little published academic literature exists in this regard. The report authored by Carr et al. (2004), which was invaluable, was obtained from the catalogue of the Legislative Library of British Columbia, and was encountered long after the majority of the literature review was complete and writing of the thesis was well underway. The texts by Aggarwal (1992) and Aggarwal & Gupta (2006) are the only comprehensive texts found related to sexual harassment in Canada. These texts proved extremely useful for the most part, although the provincial legislation

the authors focus on is from Ontario. The lack of Canadian literature presents a difficulty because, although there are similarities between Canadian and American legislation with regard to workplace sexual and gender harassment, the legal jurisdictions are different, so literature that is related solely to American legislation cannot necessarily be extrapolated to the Canadian situation. Similarly, legislation from different Canadian provinces is not necessarily applicable in British Columbia, as responsibility for labour and human rights legislation in provincially-regulated workplaces lies with the provincial governments. Therefore, the paucity of data and literature related to workplace gender harassment in British Columbia and Canada and, more specifically, legal options and processes to address it, were major gaps in the literature. The research in this thesis is intended to supplement the published literature, specifically with regard to legal avenues for pursuing sexual harassment redress in unionized workplaces in British Columbia, but more importantly to provide women with this information in a clear, concise and accessible format.

The Importance of Gender in Analyzing Workplace Harassment

Using the example of the touted differences between boys and girls and men and women in terms of aggression is useful to illustrate the concept of gender in general. Several authors[1] have opined that, from birth, both males and females have the propensity for aggression, citing behaviours such as biting, pushing, hitting, and kicking. However, by adolescence, most girls do not exhibit these behaviours (Garbarino, 2006; Lamb, 2001), which are more often associated with boys, while girls are ascribed aggressive behaviour of the "indirect" or "relational" type

[1] See, for instance, Garbarino, 2006; Howard & Hollander, 1997; Lamb, 2001; Renfrew, 1997; and Simmons, 2002.

(Bjoerkqvist et al., 1992, as cited in Simmons 2002, p. 21). This is not surprising because, traditionally, boys have been encouraged to participate in physical activities such as "rough-and-tumble play," while girls have been discouraged from doing so (Garbarino; Renfrew, 1997). Renfrew (p. 72) concludes that the toys provided to children dictate the manner in which they will play, as "[i]t is true that 'boys will be boys,' but it is also true that 'footballs will be footballs' and 'dolls will be dolls.'"

Rather than resulting solely from biological differences, it has been suggested that social factors largely account for these observed differences (Garbarino, 2006; Renfrew, 1997). The responsibility of parents and others in the shaping of children's gender roles cannot be overlooked, as "gender identity develops during very early childhood, and once established, it is quite resistant to change" (Kessler & McKenna, 1978, as cited in Howard & Hollander 1997, p. 16). Thus, rather than boys being more "aggressive" solely as the result of testosterone or other hormones as is often insinuated, it is possible that, because boys are more readily permitted or expected than girls to express direct aggressive or physical behaviours, they do in fact express these behaviours more often than girls. In addition, however, the behaviours considered directly aggressive may also more often be attributed to boys by those observing the behaviours (Harding, 1993), as that is what is expected of boys. Rather than being less aggressive than men because of levels of testosterone, then, women are less aggressive, for the most part, as the result of socialization (Garbarino; Renfrew). Furthermore, it is a defensible position that "masculine" and "feminine" behaviours, what make up a person's gender, are in large part socially

constructed, including those associated with aggression (Garbarino; Lamb; Howard & Hollander; Renfrew; Simmons).

In her text entitled *The Second Sex* (1952/1989, p. 267), de Beauvoir emphasized that "one is not born, but rather becomes, a woman," and that woman is not *naturally* inferior to man, but her situation, created by the "masculine code" (p. 481), has resulted in her assuming, and thus perpetuating, this position of subordination. De Beauvoir (p. 683) adds that, although women are not obligated to adhere to the notion that man is the superior sex, choosing not to do so results in consequences, as she is forced to trade gains achieved from assuming a position of inferiority for a new set of difficulties:

> The adolescent girl often thinks that she can simply scorn convention; but even there she is engaged in public agitation; she is creating a new situation entailing consequences she must assume.

This is an important consideration when investigating women's incursion into traditionally male-dominated workplaces. A woman entering a nontraditional workplace is not only entering a physical space from which women have been historically excluded, but a nontraditional gender space, as well (Kimmel, 2004). Thus, I considered the proposition that the workplace or occupation is a socially-constructed gendered space an important factor in the analysis of the legislation in Chapters Four and Five.

Historically Speaking: The Workplace as a Site for the Expression and Preservation of Patriarchy and Masculinity

Given their aptitudes for different tasks, it was only natural that in the middle-class American home of the mid-twentieth century, men were the family

"breadwinners," while their wives cared for their husbands, children, and the family home. Or was it? Rather than men's and women's roles resulting simply as a matter of biology, much evidence exists, as mentioned, for the possibility that the "places" of men and women are socially constructed within (Brod, 1987; Butler, 1990; Cheng, 1996; Johnson, 1997; Kimmel, 1996, 2004), and supported by (Johnson, 1997), a system of patriarchy. The myth of the male breadwinner and his dependent wife and children served to maintain the gendered division of labour for the "self-made man" (Clay, 1832; cited in Kimmel 1996, p. 26) of the mid-1800's, as well as in white-collar organizations and professions from 1940 to 1965, in which men were the vast majority of those employed (Haywood & Mac an Ghaill, 2003; Pateman, 1998). Feminist author Simone de Beauvoir (1952/1989) was one of the first to make the argument that gender is socially-constructed, which is essentially that it takes more than a penis to make one a man. If this is the case, then what does it take? Kilduff and Mehra (1996, p. 115) suggest that, "for many people, manliness may connote aggressiveness, strength, power and authority . . . and a rejection of anything feminine," and add that "[t]he stereotypical male is in charge, has muscles, and can fix the car." Whether these traits may be possessed only by people with penises, and not by any with vaginas, is doubtful, but it is *perception* that is critical, because "whether we're identified as female or male has real and powerful effects on perceptions, feelings, and expectations" (Johnson, 2005, p. 91). When gender is socially constructed, and men are in a position of being dominant in comparison with women, "what is valued is associated with masculinity and maleness" (Johnson, 1997, p. 64), while traits considered "feminine" are devalued. Furthermore, it is the

invisibility of the valuing process and its impact that is insidious (Reskin & Hartmann, 1986, p. 38):

> Beliefs about differences between the sexes, many of them taken as axiomatic, play an important role in the organization of social life. These assumptions are often so much a part of our world view that we do not consciously think about them. . . . It is their transparency that gives them their force: because they are invisible, the underlying assumptions go unquestioned, and the beliefs they entail seem natural to us.

Such is the nature of hegemonic masculinity; it is taken to be the norm without question (Kilduff & Mehra). Endowing men with "masculine" characteristics and placing higher value on those characteristics than on traits considered "feminine" has powerful consequences, including within occupations and workplaces (Johnson, 1997).

Historically, with regard to middle-class social organization, there existed a prevailing belief in the appropriateness of different social roles for men and women based on their sex (Johnson, 1997). This belief was in turn bolstered by the increasing polarization of men's and women's roles as a result of the industrial revolution, and made it easy to connect only men with the public sphere of the workplace (Johnson, 1997). The association of men with the public sphere and women with the private sphere was a dichotomy (Haywood & Mac an Ghaill, 2003) based upon the idea that women were naturally equipped to be wives and mothers, and were thus to remain in the home (Johnson, 1997; Kimmel, 1996). Living in a patriarchal culture means women do childcare (Johnson, 1997), so following logically from that in a sex-role typology informed by binaries is that men work (Haywood & Mac an Ghaill). In fact, Haywood and Mac an Ghaill (p. 21) suggest that:

> the interrelationship between middle-class ideologies and industrialization produced a reordering of the gendered landscape of work. One effect of this reordering was to place work within a breadwinner/homemaker dichotomy . . . . During the twentieth century the notion of the breadwinner bringing in the 'family wage' had a major impact on employment strategies.

It is not difficult to imagine, then, that gender roles of the time dictated that men were socialized into the world of "work" while women were, by and large, ordained to remain in the home in their roles as wives, mothers, and homemakers. One need only recall the popular children's toys of the day to understand that this was the case. The social construction of labour-related gender roles is important, because "that many occupations are considered 'male' and others 'female' has considerable effect on the early socialization process of the individual, and on recruitment and [career] performance later in life" (Epstein, 1971, p. 46).

In addition to the public (workplace) and private (home) spheres being separated according to gender, labour outside the home became gender-segregated itself (Epstein, 1971; Kimmel, 1996, 2004). Epstein (1971, p. 165) asserts that, because sex-typing is used as a means of social control, "[a]s long as certain occupations are defined as male, women who seek entry to them will be defined as social deviants and subjected to social sanctions. As a result they will be less often motivated even to consider professions defined as incompatible with women's other roles" (of caretaking and nurturing, that is). As a result of the splitting of the appropriateness of labour roles along lines of gender, and the expectation that men and women perform those roles or face social sanctions, "work and men became synonymous" (Acker, 1992, as cited in Haywood & Mac an Ghaill 2003, p. 21). The idea that only the labour performed by men is considered of value is a patriarchal

notion (Haywood & Mac an Ghaill; Kimmel, 1996). Haywood and Mac an Ghaill (p. 22) note the interrelationship between patriarchy, masculinity, men and work: "[f]or many western societies work has traditionally been understood as an important moment in the passage from childhood to adulthood . . . in short, to become a man is to become a worker."

Being a middle-class white male worker in the 1940's and '50's entailed being the family breadwinner (Kimmel, 1996). It is useful to examine what it means to be a "breadwinner," as this concept is central to the discussion of masculinity and the workplace. On the most basic level, the word "bread" can refer either to food (which, interestingly, is the most basic level of subsistence upon which a human being is dependent) or, as a slang term, to money. The term "winner" connotes a person who has won something, and to win often implies competition. So, a breadwinner in the most basic sense of the word could be construed as someone who has competed to win food or money. In a larger context, the term "breadwinner" is defined by The Collaborative International Dictionary of English (emphasis added) as "the member of a *family* whose labor supplies the food of the family" or "one who works for *his* living," while WordNet defines a breadwinner as "one whose earnings are the primary source of support for their *dependents*." In these definitions of what it meant (and continues to mean) to be a breadwinner, notions of family (especially the modern nuclear family) and dependents, as well as competition, are critical. Furthermore, it is most important to note that the term "breadwinner" was associated exclusively with men in both Victorian and modern societies (Ehrenreich, 1984; Kimmel, 1996).

The breadwinner ethic of the "self-made man" (Clay, 1832; cited in Kimmel 1996, p. 26) of the mid-1800's influenced the reflection of patriarchy and masculinity in the workplace. During this period, "[t]he central characteristic of being self-made was that the proving ground was the public sphere, specifically the workplace. And the workplace was a man's world" (Kimmel, 1996, p. 26). The establishment of the workplace as a "testing ground for masculinity," and the competition inherent in that situation, dictated that "workplace manhood could only be retained if the workplace had only men in it" (Kimmel, 1996, p. 32), which obviously had monumental relevance for both men and women.

Along with the patriarchal precept that the workplace must be open only to men was the situation that men viewed each other as "potential economic rivals" (Kimmel, 1996, p. 55). Increasing industrialization and urbanization in the late-nineteenth and early-twentieth centuries led to a concomitant elevation of angst among breadwinners, as they were forced to work for wages and had thus become dependent upon the organization for their livelihood, rather than enjoying the autonomy associated with being self-made men (Ehrenreich, 1984; Kimmel, 1996). It is not surprising that the expectation that men were the providers, coupled with the competition with other men in the workplace for jobs and advancement, resulted in anxiety for men who were faced with proving their manhood in the marketplace. In essence, for the breadwinner to be a failure (unemployed) was akin to a man being penetrated by another man's penis (Ehrenreich). By blocking entry to the masculinity-producing workplace by what De Beauvoir (1952/1989) has coined "The Other" (women, who are defined in opposition and relation to men or "The One"), the

notion that men were the natural breadwinners, a key component of independence and masculinity in the 1940's and '50's, was reified, solidifying the status quo where men were the breadwinners and women remained in the home (Kimmel, 1996). One could imagine the reception women attempting to enter these workplaces might have been met with, and the residual effect these notions of work might have on today's workplaces.

Related to the breadwinner ethic was the line of reasoning that married women performing paid labour depressed men's wages and thus the *family* standard of living, which led to trade unions arguing for an increase in wages for men to something large enough for men to support not only themselves, but their families (Pateman, 1998, p. 252; emphasis added; White, 1993). This concept came to be known in the welfare state as a "family wage" or "living wage" (Pateman; White) which was defined as "what is required for a worker as breadwinner to support a wife and family, rather than what is needed to support himself . . . ." (Pateman, p. 252). The advent of the family wage had implications for both men and women with regard to labour roles (Haywood & Mac an Ghaill, 2003; Kimmel, 1996; Pateman; White). The establishment of the family wage served to further widen the chasm between the public sphere of the male workplace and the private sphere of the home (Kimmel, 1996; Pateman). Employment outside the home, at least in certain occupations, was the strict domain of men (Johnson, 1997; Pateman). When and where women did enter the workforce, the positions they were provided access to were typically different from and lower paying than those open to men, ensuring that men remained at the "top" of the employment food chain (Kimmel, 1996), a trend

which continues today to some extent (Epstein; 1971; Kimmel, 1996). The impact of the family wage on notions of masculinity, work and the family should not be underestimated. The higher one's wage, the more masculine one was considered to be (Haywood & Mac an Ghaill). Thus, it is not difficult to see how, patriarchy aside, men's attempts to express and maintain masculinity in the nineteenth and early-twentieth centuries might have been bolstered by employing strategies to ensure that women (further competition) were excluded from "men's" workplaces (Kimmel, 1996).

Some of the mechanisms resulting in the exclusion of women and others from the workplace during this period were recruitment practices, prerequisites established for advancement, professional associations that were, at least operationally, open only to men, and the operational milieu of the organization (Ehrenreich, 1984; Epstein, 1971; Kimmel, 1996; Whyte, 1956). In the typical white-collar organization of the 1930's to the 1950's, illustrated in Whyte's 1956 text entitled "The Organization Man," the obstacles began with the recruitment process. As the organization recruited nearly exclusively from colleges and universities, which were filled almost solely with men, this was a major barrier for women (and some men) (Whyte). Recruitment practices also impeded women in the professions in the 1970's according to Epstein (1971, p. 168), who noted that "[w]omen meet resistance in the professions at the point of recruitment," as a result of "discriminatory practices." Whyte reveals that, once the recruit was successful in making his way into the organization, the training program in which he was required to participate was often competitive and functioned to ensure that only the fittest

recruits persevered. The Vick Chemical Company's late 1930's training program described by Whyte (p. 129), which Whyte notes was representative of corporate training programs of the time, made it clear that a man's "success depended entirely on beating [his] fellow students." Using a most appropriate idiom, Whyte (p. 132) explains that the grueling training protocol was designed "to separate the men from the boys." In its capacity as an arena in which a man could prove (and, by default, disprove) his manhood, it is comprehensible how such training programs and other elements of being employed in an organization could become, with regard to masculinity, the source of either security or angst for a man, depending upon the level of success he managed to achieve.

Beyond recruitment practices, other tactics have been employed in organizations and the professions which, at least on the face of it, served to limit women's access to, or success within, the ranks (Cockburn, 1991; Epstein, 1971; Seagrave, 2004). Epstein (1971) discusses additional impediments faced by women entering the public workplace between 1900 and 1965. Some of the barriers Epstein (1971, pp. 168-194) refers to are the "protégé system," the "club," differential placement in the professional structure, and self-exclusion. To benefit from the "protégé system," women had to be accepted fully into the organization in order to completely learn the job, which often did not happen because the sponsor was a man who was reluctant to assist his protégée (Epstein, 1971, pp. 169-170). The clubs and associations present in professional organizations were often open to men only, and because they were a rich source for the exchange of corporate knowledge, women were prevented from making contacts and learning the corporate culture

necessary to excel on the job (Epstein, 1971). This finding is consistent with the assertion of Harris and Firestone (1997), demonstrated in the quote in Chapter Two, whereby military men participated in subtle behaviours designed to bar women from becoming fully functioning members of the workplace. As a result of these organizational barriers, women were "routed into less visible positions—the background, backroom jobs—where their performance may not [have] come to the attention of superiors or the public" (Epstein, 1971, p. 188). Finally, women tended to exclude themselves from attempting to enter organizations simply because they accepted the prevalent stereotypes of the day about their inability to perform the job and their lack of entitlement to work for the organization (Epstein, 1971).

The examples provided above demonstrate that, to establish and maintain patriarchy and masculinity in the workplace during the nineteenth to mid-twentieth centuries, mechanisms were employed that excluded women from the workplace, a practice which continues to some extent today (Kimmel, 1996). For instance, work-related sex segregation sets up the situation whereby "[d]ifferent occupations are seen as more appropriate for one gender or the other, and thus women and men are guided, pushed, or occasionally shoved into specific positions" (Reskin, 1996, as cited in Kimmel 2004, p. 189). As a result, it could be expected that women might be perceived as infringing upon gender boundaries when entering occupations that have traditionally been male-dominated. This is precisely why those occupations were chosen for evaluation, and women working in those occupations were interviewed for this thesis.

One of the most widely cited examples of alleged sex segregation was the case of the United States Equal Employment Opportunity Commission (EEOC) versus Sears retail store (*EEOC v. Sears, Roebuck and Co.*, 628 F Supp 1264 (N.D. Ill 1986); 839 F 2d 302 7th Cic. [sic] 1988, as cited in Kimmel 2004, p. 192). The EEOC contended that Sears funneled women into positions selling cosmetics, for instance, while men were offered positions selling higher-end consumer goods, thereby permitting men to earn higher commissions (Kimmel, 2004). Sears contended that women were naturally suited to the types of positions they were placed in, as were men for the better paying sales positions (Kimmel, 2004). The case eventually made its way to the United States Supreme Court, which upheld Sears' acquittal on charges of sex discrimination, largely on account of the fact that no women testified they had been discriminated against (Kimmel, 2004). Rather than proving that women were not discriminated against, however, the absence of testimony may have resulted either from the women's fear of reprisal or compliance with the idea that the only employment they were suited for at Sears was the cosmetic counter.

Richmond Fire Rescue Services in Richmond, British Columbia offers a more recent example of the means by which some organizations may manage to "exclude" women. This is a workplace in which several women firefighters claimed they had been harassed by their male co-workers. One of the firefighters claimed, a claim which appeared not to have been disputed in court, that she had been the target of gender-based profanity (including in written form on her locker), feces placed in her boots, the water being cut off to her hose during the process of battling

a fire (Klie, 2006), and several other disturbing incidents that occurred on an ongoing basis for years (*Moznik v. Richmond [City of] et al.*, 2006 BCSC 1848). The mediator in this case, in his written arbitration decision, described "juvenile and hostile behaviour" displayed toward female firefighters that he alleged "contributed to the barriers to *women's* potential within the RFRD" (Ready, 2006, p. 10; emphasis added) and "had the effect, at the very least, of undermining their [women's] dignity and imposing barriers on their *equal participation* in the workplace" (Ready, p. 13; emphasis added). Ready (p. 13) added that "[t]his conduct can be described as a cultural practice within the RFRD," which is important because it suggests discrimination against women was embedded in the culture of the workplace. Susan Paish (2006, p. 25) a lawyer who conducted an external review of the Department, characterized the department as having a "paramilitary [masculine] culture" and "an environment that does not tolerate deviations from narrowly defined [again, masculine] norms." Paish's remarks are strikingly similar to those made by Epstein (1971, p. 167) nearly thirty-five years earlier, who noted that workplaces are relatively closed to people who possess characteristics or beliefs dissimilar to those in the dominant group: "[p]rofessions . . . tend toward homogeneity and exercise exclusionary practices which deter the participation of persons or groups who do not possess characteristics defined as appropriate. They are characterized by shared norms and attitudes . . . ." Such was the case with Richmond Fire-Rescue Services.

Comparable to the situation at Richmond Fire-Rescue Services, the women who participated in this research study seemed to suggest that the harassment to which they were subjected was rooted in the fact that they were women who were

thus treated differently than their male counterparts. These women seemed to feel under pressure to perform at a higher level than their male co-workers in order to simply be treated as equals. Participant 2 confided that she had obtained some of the highest grades in her class in the process of becoming qualified for her occupation, so it is a distinct possibility that she was, in fact, better at her job than some of her male co-workers. Regardless, she explained that she was not treated on par with her male co-workers:

> If I actually want to get something done or see a change happen I'll convince my, one of my work mates that it's a good idea and then he will —you know, talk to my boss and then it will happen, right? Whereas, if I want it to happen I know there's just absolutely no point in trying to convince my boss that it's a good idea because he simply, he simply doesn't respect what I have to say.

Despite the fact that the participants in this research study were fully qualified to hold the positions they held, they related being subjected to harassment that could be construed as intended to ostracize them. For instance, one of the participants recounted a tactic used by one of her male co-workers: "he would regularly make sure that I was put in positions where I was the person using that particular tool so that I would look foolish." A similar scenario was encountered by a woman named Bonita Clark, who worked as a pump tender while employed for Stelco in 1979, a steel plant located in Hamilton, Ontario (Seagrave, 1994). Despite the fact that she was hired as a pump tender, Clark "was repeatedly ordered to enter the men's washrooms and change area and clean them" which Clark stated led to her feeling humiliated (Seagrave, p. 79). The fact that Participant 1 and Bonita Clark were required to perform tasks for the purpose of making them "look foolish" or humiliating them was marginalizing and exclusionary. In fact, Participant 1 (emphasis added)

stated that "*he made sure that I knew that I wasn't welcome there*, he made sure that any opportunity that he had to show me that he could do whatever it was that it might be, he would put me in positions where I would struggle in order to make it look like I couldn't do my job." The men who harassed these women seemed to use harassment as a means of serving notice that the women were entering a domain in which they did not belong, or at least that was how the women experiencing it perceived the harassment.

Given the history of the workplace serving as a location for the perpetuation of patriarchy and masculinity, perhaps men employed in male-dominated occupations, when confronted with women capable of doing jobs that only men are supposed to be competent to do, end up feeling *incompetent* as a result and harass those co-workers in order to elevate their perceived self-competency and sense of masculinity. Or, the harassment may simply be designed to expel someone the harasser feels is not, even today, entitled to exist in that workplace for any number of other reasons. Cockburn (1991, p. 215; emphasis in original), although her text is somewhat outdated and changes may have since been realized, concludes that the lack of inequality for women in the workplace, including the influence trade unions have (or perhaps more precisely, do *not* have) on equality is not only a "legacy of history," but more: "[t]here is active resistance by men. They generate *institutional* impediments to stall women's advance in organizations. At a cultural level they foster solidarity between men and *sexualize, threaten, marginalize, control and divide women*." White (1993) notes, in her discussion of the living wage, that men had good reason to fear the incursion of women into the labour market for financial

reasons. It is possible that the expectation placed upon men to be the breadwinners contributed to this fear, but nonetheless does not justify the exclusion of women from the workplace. In any event, the workplace may be a source of contradiction for women. Cockburn (1991) quotes a passage from Patricia Walters (1987, as cited in Cockburn 1991, p. 66) in which Walters refers to the civil service as a culture which "opens itself to women and yet squeezes them out; which integrates them, yet marginalizes them." Workplace gender harassment is one method by which men accomplish this mission.

The previous illustrations outline the methods by which patriarchy and masculinity were constituted in, and reinforced by, the concept of the self-made man of the nineteenth century and the workplaces of the 1940's, '50's and '60's. Examples are also provided of how some of these strategies appear to continue today. The American workplace of the mid-twentieth century was a principal locale for the construction and preservation of masculinity (Cheng, 1996; Kimmel, 1996; Whyte, 1956). Cheng (p. xiv) suggests that "work organizations are places in modern times where hegemonic masculinity has been used as an organizing principle and where it is contested for, achieved, and conferred." Prevailing patriarchal ideologies regarding masculinity were predicated on the notion that essential differences between the sexes made men naturally suitable for employment by default, since women were natural reproducers and caregivers (Kimmel, 1996). This belief prescribed that men were the breadwinners and protectors of women and children, who were their dependents (Kimmel, 1996; Pateman, 1998). The notion of the male breadwinner, who, it was viewed, had

economic responsibility for his dependents, led to the establishment of a living wage, which further emphasized the separation between the public sphere of the workplace and the private sphere of the home (Kimmel, 1996; Pateman). Furthermore, since men required access to employment that paid them an appropriate wage in order to fulfill the role of breadwinner, and because masculinity was equated with independence (which men did not necessarily feel as a result of being dependent upon the organization for their wage as opposed to being "self-made"), the necessity arose for anyone other than white middle-class men to be excluded from the workplace (Kimmel, 1996).

Exclusion of "others" (De Beauvoir, 1952/1989) was accomplished either by putting in place mechanisms to block entry or by patriarchal, hegemonic practices that led to those who were not white middle-class men failing to even consider attempting to enter the organization (Epstein, 1971). The clash between the reflection and perpetuation of patriarchy and masculinity in male-dominated occupation, and women's recent incursions into these occupations, is summarized by Kimmel (2004, p. 186):

> The combination of the persistence of traditional gender ideologies and changes in economic and social realities makes today's workplace a particularly contentious arena for working out gender issues. . . . women face persistent discrimination based on their gender: . . . they are made to feel unwelcome, like intruders into an all-male preserve.

Gender harassment is one piece of evidence that women are not valued or respected by some of their male co-workers as full and equal participants in the workplace. It is also a tool some men use to dispatch such "intruders" from this gendered space (Kimmel, 2004, p. 202): "[s]exual harassment . . . is about

making workers feel unwelcome in the workplace, about reminding them that they do not belong because the workplace is men's space."

It must be recognized that by no means do all men discriminate or otherwise attempt to exclude women from, and in, the workplace. In fact, two of the three participants in this study specifically emphasized that it was only one man who harassed them, and that they were treated respectfully by their other male co-workers. On the other hand, one of the participants also acknowledged uncertainty about whether those co-workers would stand next to her in a public arena if she filed a harassment complaint. If she was correct in her assumption, the possibility that the men she worked with would not support her could have arisen from fear of backlash from their male co-workers as opposed to tolerance of discrimination. Nevertheless, as Jackson Katz propounds, violence against women is a *men's issue* (personal communication, February 2009; emphasis added). Hence, the failure of men to support their female co-workers who face workplace harassment does signify complicity to some degree. It may also be a testament to the prospect that, as mentioned, hegemonic masculinity is potent and goes, for the most part, undetected and therefore unquestioned (Kilduff & Mehra, 1996). Thus, having an awareness of the historical implications of patriarchy and masculinity is essential to a complete understanding of the analysis of the legislation to be undertaken in the next two chapters. Men may simply be attempting to prevent women from entering nontraditional workplaces, or expelling them once they do enter, based on sheer bigotry, oppression, financial competition, or the sense that men and only men are capable of

adequately performing the occupational requirements of the profession. However, the effect upon both men and women of the long-standing socially-imposed requirement that men exhibit masculinity or perform their gender (Butler, 1990) appropriately, which is inextricably linked with work (Cheng, 1996; Haywood & Mac an Ghaill, 2003; Kimmel, 1996), is compelling and underpins the examination of the efficacy of legal avenues for resolving workplace gender harassment.

CHAPTER FOUR

OVERVIEW OF LEGISLATIVE OPTIONS FOR REDRESS

Information about how to file complaints of workplace gender harassment is difficult to find in a clear and concise format. Even a cursory examination of the websites dedicated to this legislation reveals that, although much information is available, it is written in language that is not necessarily easily understandable, and there are so many rules, guides and information sheets[1] that it is difficult to determine where to begin when seeking information. Thus, two of the goals of this research are to analyze the legislative options available to women seeking redress for workplace harassment and to provide a summary of that analysis in an information booklet as comprehensively, clearly and concisely as possible.

It was not a simple task to determine how to best organize this analysis, as the legislative acts are lengthy and commentary was provided with regard to each relevant section for the British Columbia *Labour Relations Code* (1996), which is contained in its entirety in Appendix D. The decision was eventually made to split the analysis into two chapters. In this chapter, I provide an overview of the salient aspects of each legislative option[2], which are outlined in Appendix C. The analysis incorporates workplace harassment and discrimination policies, union grievance

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[1] The British Columbia Labour Relation's Board's website hosts a "code guide," 19 "forms," 8 "information bulletins," 10 "practice guidelines," and a section entitled "rules." On the British Columbia Human Rights Tribunal website, there are 39 "rules of practice and procedure," 5 "guides," 25 "information sheets," and 17 "forms."

[2] Although some of these options may be pursued simultaneously, it may also be the case that a particular body may either hold a complaint in abeyance pending the completion of a complaint process taking place elsewhere, or reject a complaint on the basis that it is being addressed by another legal body. Complainants should be aware that they may be forced to choose between one legal option or another, and in the process of making this determination, may wish to consult legal counsel. A statement to this effect is included in the information booklet (Appendix H).

procedures (including the British Columbia Labour Relations Board procedures), and the processes of the British Columbia Human Rights Tribunal. The supporting legislation is also examined, namely the British Columbia *Labour Relations Code* (1996), and the British Columbia *Human Rights Code* (1996). Chapter Five will contain a more detailed analysis of these legislative options, relevant comments from the research participants, and any recommendations resulting from this analysis. The analysis undertaken in Chapters Four and Five culminates in the production of a booklet that may be provided to women seeking information with regard to resolving workplace gender harassment, and those assisting them, text of which is contained in Appendix H.

Overview of Legal Options Potentially Available to Women Considering Filing Harassment Claims

A. Workplace Harassment and Discrimination Policies

1. The title of the legislation and the legal body that hears complaints filed in accordance with that legislation;

Although it was intended that the harassment and discrimination policies of the participants be evaluated, only one of those policies was available, and as previously mentioned, it contained no procedures. According to Section 247.4 of the *Canada Labour Code* (1985), harassment and discrimination policies are legally required to be posted in federally-regulated companies, which are denoted in Section 2 of the Canada Labour Code (1985). Although the British Columbia *Human Rights Code* (1996) does not require workplaces under its jurisdiction to post policies in their workplaces, or even to have a policy, it is highly recommended that an

employer do so because it clarifies the type of behaviour that constitutes sexual harassment and because "it gives a clear signal of the employer's commitment and determination to act vigorously against any incident of harassment and to create an environment where offending and objectionable conduct will not be tolerated" (Aggarwal & Gupta, 2006, p. 128). A harassment policy can offer some legal protection for an employer (Aggarwal & Gupta), so Aggarwal and Gupta recommend that the policy contain certain basic components. Aggarwal and Gupta as well as Section 247.4 of the *Canada Labour Code* (1985) provide examples of the elements to be included in a workplace sexual harassment policy. Although it did not contain reference to complaint procedures, the policy from the workplace of Participant 2 provided a preamble (indicating that the intent of the policy was to maintain a workplace free of harassment and discrimination, and not only the specific conduct prohibited by the British Columbia *Human Rights Code*), the responsibilities of the employer (to communicate the policy and to develop a confidential reporting and investigation system), the rights of the employee, and a statement that the employer was accountable to the Board in the administration of the policy. Incidentally, Participant 2 added that, as a result of corporate restructuring, the Human Resources department of her employer was in a completely different city from where she was located. This was a concern raised by a participant in the study undertaken by Carr et al. (2004). The "body" that would hear a complaint filed in accordance with a workplace harassment policy could be a human resources employee, a harassment and discrimination advisor, a panel of members, or any body so named in a policy.

2. The definition of sexual harassment or gender discrimination contained in the piece of legislation;

Workplace harassment policies may, for purposes of definitions, simply make reference to the prohibited grounds of discrimination in the appropriate provincial Human Rights Code (or *Canadian Human Rights Act* (1985) for federally-regulated workplaces). Definitions of personal harassment may also be included, as that form of harassment is also often prohibited by employers. The policy of Participant 2 referred to the definitions in the British Columbia *Human Rights Code* (1996), but did not specifically state what those definitions were. It did, however, mention behaviour constituting personal harassment.

3. Whether access to the legal option is limited to certain individuals (by virtue of having a collective agreement, for instance);

As previously noted, not all workplaces have, or are required to have, workplace harassment policies. In workplaces that do have them, workplace harassment policies typically cover all employees who are employed by that particular employer. The decision by the Supreme Court of Canada in the case of *Robichaud v. R.* (1987), 8 C.H.R.R. D/4326 (as cited in Aggarwal & Gupta 2006, p. 47) provided that an employer may be held responsible for its employees perpetrating harassment in work-related situations either on or off the physical work premises. In addition, this case established that, because employers are responsible to provide their employees with a harassment-free workplace, they may be held liable for sexual harassment of their employees by non-employees such as contractors, customers and clients, for instance (Aggarwal & Gupta, 2006).

4. The general procedures to be followed to initiate a complaint under the legislation;

Complaint procedures may be outlined in workplace harassment policies, and complaints are generally submitted to a person holding the position of harassment policy advisor, a person's supervisor, or the Human Resources department (Aggarwal & Gupta, 2006). The complaint may be resolved informally by the resource person, or in cases where a formal complaint is filed, a panel consisting of members of the workplace may hear the complaint and resolve it.

5. If available, how support for complainants can be accessed (for instance, legal or advocacy assistance);

This information is difficult to ascertain for workplace harassment policies, as they are not administered by a central body, so the support available would depend in large part upon the workplace and the people charged with administering the policy. Although the person to whom the complaint is submitted may be a source of support, as a result of being required to investigate the complaint that person must also remain unbiased and maintain confidentiality. I asked the former harassment policy advisor at the University of Northern British Columbia whether there was a possibility that women considering filing complaints could be put in contact with women who had already filed complaints, if the women who had previously done so were willing to lend support. The previous advisor responded that an advisor would not be in a position to connect women with one another as a result of the fact that they are obliged to maintain confidentiality as a first priority, including that of respondents to the complaint (C. Hardy, personal communication, June 11, 2008).

Therefore, if the advisor put two women in contact, either of those women would be in a position to potentially divulge information regarding the alleged harasser, and the advisor would be in violation of her or his responsibility to uphold confidentiality (C. Hardy, personal communication, June 11, 2008). This is unfortunate, as women who have already been through the process could hold information of use to those considering dealing with a complaint via this legislative route.

6. Sections in the piece of legislation of significant interest to women filing harassment claims;

It is advisable for women to examine the definitions of harassment and discrimination contained in workplace harassment policies, although, as mentioned previously, it is difficult to ascertain how much weight one should allow the definitions to carry in deciding whether to proceed with a complaint. Women considering filing complaints should also examine the complaint procedures if they are contained in the policy.

7. Potential outcomes associated with using this legal option;

Potential outcomes regarding harassment policies are difficult to establish owing to matters of confidentiality. One would need to gain access to the report from the person administering the policy, and it is likely that the information contained in the report would be presented in general terms. For instance, in the harassment and discrimination report from the University of Northern British Columbia from 2006, outcomes were not published other than to indicate that the complaint was resolved. However, possible resolutions may be denoted in the policy, although that

information would be insufficient to allow a woman to determine the result she might achieve in relation to her particular situation and complaint.

8. Potential positive and negative aspects associated with utilizing the piece of legislation and associated procedures;

Workplace harassment policies are useful because they are readily accessible and may result in resolution being obtained informally. They are also intended to be confidential. Unfortunately, because those to whom complaints may be directed may not necessarily be sensitive to matters of confidentiality and trained in the proper approach to resolving complaints, they could create problems for those seeking resolution. For instance, Participant 2 in this research study indicated that her situation was complicated by her supervisor's approach to her complaint:

> . . . I went to my manager outside the union. . . and he had a direct conversation with my boss, I guess he [the manager outside the union] assumed that it was private and my boss went into our shop and just told all the guys that. . .I forget what his exact words were, but, yeah, after that, nobody talked to me for weeks, and it was okay for them to do that because, according to him, well, you know, if you're going to (pause) not be able to handle the jokes then obviously they're not going to talk to me at all, 'cause they don't know what, what they can and cannot say to me, so they're not going to say anything to me.

B. Labour Relations Options: Collective Agreement Grievance Procedures and the British Columbia *Labour Relations Code* (1996) and Labour Relations Board

1. The title of the legislation and the legal body that hears complaints filed in accordance with that legislation;

In provincially-regulated workplaces in British Columbia, workplace union collective agreements and the British Columbia Labour Relations Tribunal are connected in the sense that both are governed by the British Columbia *Labour*

Relations Code (1996), which regulates labour relations in unionized workplaces under provincial jurisdiction in British Columbia. The workplaces of those employed in any "federal work, undertaking or business" under the legislative authority of the Parliament of Canada are regulated by the *Canada Labour Code* (1985), and those employees would be required to file complaints in accordance with that legislation. According to the website of the Canadian Human Rights Commission[3], the following workplaces are federally-regulated: "federal departments, agencies and Crown corporations; chartered banks; airlines; television and radio stations; interprovincial communications and telephone companies; buses and railways that travel between provinces; First Nations, and; other federally regulated industries, such as certain mining operations." The British Columbia Labour Relations Board[4] is an administrative tribunal that adjudicates alleged contraventions of the British Columbia *Labour Relations Code* (1996). The Board's Collective Agreement Arbitration Bureau has authority over "arbitration boards" constituted consensually by the union and employer, as well as the power to appoint settlement officers, mediators and arbitrators in certain circumstances. Those seeking information with regard to resolving complaints of workplace harassment with the British Columbia Labour Relations Tribunal must be aware that, except with regard to Section 12 complaints, which will be discussed shortly, they are permitted to make complaints directly to the Labour Relations Tribunal only in very limited circumstances.

2. The definition of sexual harassment or gender discrimination contained in the piece of legislation;

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[3] The website referred to was accessed for this research on April 12, 2009, at http://www.chrc-ccdp.ca/discrimination/federally_regulated-en.asp.

[4] The Board's website may be accessed at http://www.lrb.bc.ca/.

Only one of the participants in this research study (Participant 2) was able to provide a copy of the collective agreement section regarding sexual harassment that was in effect at the time she sought resolution. That agreement contains no definition of sexual harassment, but indicates simply that "the parties subscribe to the principles of the Human Rights Code of British Columbia." The *Labour Relations Code* (1996) does not contain a definition of sexual or gender harassment. It deals with labour issues more generally, as outlined in Part 2 of the *Code*, such as rights of employers and employees, unfair labour practices, and assignment of fees and dues.

3. Whether access to the legal option is limited to certain individuals (by virtue of having a collective agreement, for instance);

Access to resolution in accordance with grievance procedures of a collective agreement and arbitration procedures as outlined by the British Columbia *Labour Relations Code* (1996) and Labour Relations Board is limited to people working in unionized workplaces, as is the right to lodge duty of fair representation complaints in accordance with Section 12 of the *Code*. In fact, as will be discussed in Chapter Five, Sections 136 and 137 of the *Labour Relations Code* (1996) establish exclusive jurisdiction of the Labour Relations Board to deal with matters or disputes determined to have arisen out of a collective agreement. This requirement prevents, except in very specific circumstances, unionized employees from taking the matter to court. It does not, however, preclude the filing of a complaint in accordance with a workplace harassment policy or the British Columbia Human Rights Tribunal, although both the Labour Relations Board and Human Rights Tribunal reserve the

right to either refuse to hear a complaint or hold it in abeyance until a decision is obtained in the other body. Since the British Columbia *Labour Relations Code* (1996) regulates workplaces under provincial jurisdiction, the British Columbia Labour Relations Tribunal is also only accessible to those employed in unionized workplaces under British Columbia provincial jurisdiction.

4. The general procedures to be followed to initiate a complaint under the legislation;

With regard to workplace gender harassment, individuals must file complaints in accordance with the union grievance procedure outlined in their workplace's collective agreements, rather than directly to the Labour Relations Board, except in rare cases, such as in relation to Section 99 of the *Labour Relations Code* (1996), under which an employee could file an application contending that she would be denied a fair hearing. Regardless of whether this tenet is explicitly outlined in a collective agreement, legal precedent in relation to Section 12 of the British Columbia *Labour Relations Code* (1996) has established that deciding how far to proceed with the grievance process, including the right to proceed to arbitration, is the exclusive right of the union, not the employee filing a grievance.[5] This matter is discussed in the next chapter of this thesis and in Appendix D. Therefore, if an employee seeks resolution in accordance with the *Labour Relations Code* (1996) and Board rules of procedure, the only recourse open to her is to consult her union, who maintains authority over whether and how far to proceed with a grievance. The grievance procedure outlined in the collective agreement governing the workplace of

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[5] Please refer to http://www.lrb.bc.ca/guidelines/representation.htm, accessed March 15, 2009.

Participant 2 stipulates that for Stage 1 of the grievance procedure, the individual should discuss the issue with her immediate supervisor, and if no resolution is forthcoming, consult with her job steward. In Stage 2, the "parties within the employer's operation" are required to make every reasonable effort to resolve the matter. Stage 3 requires that, if the matter is not resolved at Stage 2, the parties, which are specified as being the employer and the union's representative, attempt to resolve the matter, and if they are unable to do so, either party may refer the matter to arbitration within 28 calendar days. In my experience, this is a fairly typical grievance procedure, in which the union maintains sole authority to advance a grievance, at least beyond the initial step.

5. If available, how support for complainants can be accessed (for instance, legal or advocacy assistance);

If a union decides to take a complaint of workplace harassment as far as an arbitration proceeding, individual employees will have their complaints referred to arbitration and handled by their union representatives. The union may in turn employ legal counsel to assist with the arbitration proceeding, but are not obligated to do so. For instance, the collective agreement of Participant 2 specifically indicates that, at least with regard to expedited arbitration, the parties will not employ legal counsel. In addition to union representation, unionized individuals seeking information may contact the Labour Relations Board's Information Officer or consult the "Code Guide" available on the Labour Relations Board's website at http://www.lrb.bc.ca/codeguide/ (accessed March 15, 2009). If grievors are dissatisfied with the *representation* (which is not equivalent to support) they receive from their union, they may file

complaints with the Labour Relations Board in accordance with Section 12 of the *Labour Relations Code* (1996), which is the section related to the union's "duty of fair representation" to a member of the bargaining unit. Although this section provides a modicum of protection to a woman who has been unfairly treated by her union, it requires that the grievor establish that her union treated her in a manner that was "arbitrary, discriminatory or in bad faith," which is very narrowly interpreted. Section 12 is discussed in Chapter Five and Appendix D.

6. Sections in the piece of legislation of significant interest to women filing harassment claims;

The grievance and arbitration procedures of the collective agreement governing a woman's workplace should be the initial point of consultation for women seeking resolution for workplace gender harassment by way of their union. If the collective agreement contains a section on sexual harassment or harassment generally, that section should also be consulted. Part 8 (entitled "Arbitration Procedures") of the British Columbia *Labour Relations Code* (1996) is the most relevant part of that piece of legislation. However, several sections in that Part are applicable only in situations where the union and employer are unable to resolve the harassment grievance using a mutually agreed-upon mediator or arbitrator. In addition, Section 12 of the British Columbia *Labour Relations Code* (1996) will be of importance to women considering filing complaints regarding their union's "Duty of Fair Representation."

7. Potential outcomes associated with using this legal option;

Section 89 of the British Columbia *Labour Relations Code* (1996), entitled "Authority of Arbitration Board," sets out the decision-making authority of an arbitration board, providing that the Board may, among other things, make monetary settlements, interpret and apply regulatory Acts affecting the employment relationship, and encourage settlement of the dispute, including with the use of mediation. It bears mentioning that an arbitration board, as defined in Section 81 of the British Columbia *Labour Relations Code* (1996) may include either a single arbitrator or another body constituted in accordance either with the rules of the Board or under a collective agreement. However, some collective agreements denote the nature of the arbitration board they will use. For instance, in the case of the collective agreement of Participant 2, it is clearly stipulated in the agreement that the parties, when referring a matter to arbitration, will refer it to a single arbitrator only.

It is difficult to ascertain the scope of grievance and arbitration decisions regarding sexual harassment and gender discrimination, as only decisions rendered by the Labour Relations Board are contained on the Board's website. That is, arbitration decisions made by an arbitration board constituted in accordance with a collective agreement, although they must be filed with the Labour Relations Board's Collective Agreement Arbitration Bureau and may be published elsewhere, are not made public on the Board's website (P. Driscoll, personal communication, May 1, 2009). As a result of this discovery, it thus became clear that reviewing arbitration decisions was beyond the scope of this thesis. However, as a result of reviewing in detail the case of Ms. Jeanette Moznik, a firefighter from the Richmond Fire-Rescue

Services, I questioned whether arbitrators may tend to resolve grievances from a perspective that is more collective than individual in nature, as they are in the business of settling disputes regarding collective agreements affecting groups of employees. For instance, in the arbitration decision of mediator Ready (2006, pp. 14-15) in this case, Ready recommended that, to ameliorate the inequality the women in the Department had experienced, the following actions be taken:

> (1) change the physical space for women at work so that they are no longer physically reminded that the workplace was designed for men, with women only an afterthought; (2) continue to pursue behavioural change through increasing the commitment to ongoing awareness training immediately; and (3) providing a forum to address disputes arising from this process and any ongoing manifestations of harassment at work.

Although these recommendations are laudable and serve to address the situation in a thoughtful manner, I am not certain the complainant would have found this outcome to be a suitable resolution to the harm she had experienced on a personal level. Although the *Labour Relations Code* (1996) and Board procedures do not require that the arbitration board consider personalized resolutions, I mention the possibility that the focus of arbitration boards may be on collective resolutions because it may be useful for women to consider this and discuss it with their union representative in the course of determining whether and how to proceed with a complaint. In fact, the union may require that the grievor state the resolution she is seeking. However, the woman is not a party to her own grievance, a situation that will be discussed in greater detail in Chapter Five, and I am uncertain how a particular union would decide to proceed if they were not in agreement with a grievor's proposed resolution.

8. Potential positive and negative aspects associated with utilizing the piece of legislation and associated procedures;

The potential positive and negative aspects associated with seeking resolution by way of grievance and potential labour arbitration are summarized here, and are also discussed in greater detail in the upcoming chapter. One of the positive aspects of dealing with a complaint of harassment with one's union is that many unions have taken the initiative to educate themselves and their members about workplace harassment. Furthermore, owing to the fact that the union has authority over the grievance and resolution process, the union is required to provide the grievor with representation and pay any costs associated with an arbitration proceeding. The union's obligations in this regard will save the complainant money as well as the time and effort required to locate a suitable lawyer to represent her. Having automatic representation is important, because complainants may not have the financial means to hire a lawyer, and because lawyers who are familiar with labour relations matters are not easy to find (Carr et al., 2004).

There are also, unfortunately, several potential negative implications of seeking resolution by way of labour arbitration, concerns which are discussed at greater length in Chapter Five and Appendix D, and are summarized here. The first matter raising concern is that union representatives are drawn from employees in the complainant's workplace who, especially in male-dominated workplaces, may be discriminatory towards female co-workers (White, 1993). This was certainly the case with regard to Ms. Moznik's situation. Second, because the grievance is between the union and the employer, the grievor may not be permitted to provide input into how

and whether the grievance proceeds, essentially "sidelining" her from a process that has the potential to impact her significantly in any number of ways. Third, the union is required to represent not only the complainant, but also the alleged harasser if the harasser is a union member, likely making this an uncomfortable situation for the complainant (Aggarwal & Gupta, 2006; White, 1993). Finally, as Sections 136 and 137 of the British Columbia *Labour Relations Code* (1996) establish that the Labour Relations Board has exclusive jurisdiction to handle contraventions of the *Code* (1996), women in unionized workplaces are prevented from dealing with workplace harassment by way of the courts, where they might be apt to obtain "better" results owing to having legal representation and the fact that a judge's decision may be more personalized than that of a mediator or arbitrator.

C. British Columbia *Human Rights Code* (1996) and British Columbia Human Rights Tribunal

1. The title of the legislation and the legal body that hears complaints filed in accordance with that legislation;

The British Columbia Human Rights Tribunal hears complaints of discrimination filed in accordance with the legislation laid out in the British Columbia *Human Rights Code* (1996).

2. The definition of sexual harassment or gender discrimination contained in the piece of legislation;

The British Columbia *Human Rights Code* (1996) does not contain a definition of sexual or gender harassment, *per se.* Section 13, subsection 1(b) of the *Code* (1996) outlines grounds on which persons may not be discriminated against:

> [a] person must not discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

Therefore, Section 13(1)(b) provides that, with regard to any "condition of employment," women cannot be discriminated against as a result of their gender ("sex" in the definition), which would form the basis of a complaint in situations of workplace gender harassment. Whether or not the Tribunal would consider the particulars of the complaint to meet the definition of discrimination is another matter, as the onus is on the complainant to demonstrate that the harassment was discrimination based on sex. It is interesting to note that Section 14(1) of the *Canadian Human Rights Act* (1985) indicates that it is "a discriminatory practice . . . to harass an individual on a prohibited ground of discrimination," and Section 14(2) adds that sexual harassment is considered to be harassment. No such reference to harassment or sexual harassment is found in the British Columbia *Human Rights Code* (1996).

3. Whether access to the legal option is limited to certain individuals (by virtue of having a collective agreement, for instance);

Section 21 of the British Columbia *Human Rights Code* (1996) permits that anyone who alleges that the *Code* has been contravened, including those employed in unionized workplaces, can file a complaint. The complaint may be filed either in relation to himself or herself, or on behalf of another person or group of persons. The British Columbia *Human Rights Code* (1996) only governs employees of workplaces

under provincial jurisdiction. Federally-regulated workplaces, which are delineated in Section 2 of the *Canada Labour Code* (1985) and were mentioned under point 1 in Section B (Labour Relations Options) previously in this chapter, are governed by the *Canadian Human Rights Act* (1985). Complaints filed in accordance with that *Act* are heard by the Canadian Human Rights Commission. People employed in federally-regulated workplaces must thus access the Canadian Human Rights Commission rather than the British Columbia Human Rights Tribunal.

4. The general procedures to be followed to initiate a complaint under the legislation;

In order to file a complaint with the British Columbia Human Rights Tribunal, in accordance with Section 22(2) of the British Columbia *Human Rights Code* (1996), a complaint form must be completed and submitted within six months of the situation leading to the complaint. In the case of situations that are ongoing (what is referred to in the *Code* as "continuing contraventions"), which may be the case with harassment, the complaint must be submitted within 6 months of the latest event. Timelines *may* be extended in certain circumstances. Section 21 of the *Human Rights Code* (1996) addresses the filing of complaints, while Section 22 and "Information Sheet No. 4" speak to timelines with regard to filing complaints. In addition, Rule 10 of Part 3[6] ("Making a Complaint and Responding to a Complaint") of the "Rules of Practice and Procedure" of the British Columbia Human Rights Tribunal details how to file a complaint and the necessary forms that must be

[6] This document was accessed for this research on March 15, 2009 at http://www.bchrt.bc.ca/rules_practice_procedure/rules_practice_procedure_part3.htm#rule_10.

completed. A summary of the complaint process of the British Columbia Human Rights Tribunal is contained in Appendix G[7].

5. If available, how support for complainants can be accessed (for instance, legal or advocacy assistance);

Information found on page 3 of the document entitled "GUIDE I – The BC Human Rights Code and Tribunal"[8] suggests that complainants seek legal counsel, but adds that they may receive additional assistance from a number of sources, including the British Columbia Human Rights Coalition, British Columbia Human Rights Clinic, and University of British Columbia Law Students' Legal Advice Program. The Guide also notes that legal information may be obtained from the websites of the British Columbia Human Rights Tribunal, the British Columbia government, and the Canadian Human Rights Reporter.

6. Sections in the piece of legislation of significant interest to women filing harassment claims;

The sections of the British Columbia *Human Rights Code* (1996) which women seeking information regarding filing gender harassment or discrimination complaints would most likely benefit from examining are the following: Section 2 ("Discrimination and Intent"), which notes that intent is not required for discrimination to be found; Section 13 ("Discrimination in employment"), which outlines the grounds upon which people may not be discriminated against in employment; Section 14 ("Discrimination by unions and associations"), which outlines the grounds upon

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[7] This summary is taken, verbatim, directly from the British Columbia Human Rights Tribunal 2007-2008 Annual Report, with permission.

[8] This document was accessed for this research on March 15, 2009 at http://www.bchrt.bc.ca/guides_and_information_sheets/default.htm.

which unions may not discriminate against their members; Section 22 ("Time limit for filing a complaint"), which sets out that a complaint must be filed within 6 months of the event, unless there are mitigating circumstances; Section 37 ("Remedies"), which sets out the range of remedies that may be provided by the Tribunal, and; Section 43 ("Protection"), which states that women may not be exposed to punishment or further discrimination as a consequence of filing a complaint.

The British Columbia Human Rights Tribunal website contains "Rules of Practice and Procedure," as well as several "tribunal guides" and "information sheets" that women would definitely benefit from examining if they are contemplating filing a claim. The guides and information sheets are most useful, and some of the more important rules are Rules 10 ("Making a complaint"), 15(1) ("Other Proceedings"), 16(1) ("Complaint Resolution Alternatives"), 17 – 19 ("Complaint Streaming," "Standard Stream Complaint Process," and "Case-Managed Stream Complaint Process"), 21(1) ("Settlement Meeting Options"), 26(5) ("Deferral of Complaints"), and most important, Rule 35 ("Hearings"), which outlines the process for hearings. It is important to note that, with regard to rules, guides and information sheets, Section 27.3 ("Powers to make rules and orders respecting practice and procedure") of the British Columbia *Human Rights Code* (1996) is preferable to the parallel Section (132, "General guidelines") of the British Columbia *Labour Relations Code* (1996), because it does not contain a disclaimer. Section 132(1) of the British Columbia *Labour Relations Code* (1996) states that (emphasis added) "[t]he board may formulate general guidelines to further the operation of this Code *but the board is not bound by those guidelines in the exercise of its powers or the performance of*

its duties," despite the fact that Section 132(3) of the same *Code* indicates that "[t]he board must make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions." It is not helpful to women seeking information about complaint processes that the British Columbia Labour Relations Board, despite being required to publish guidelines and rules, is not bound by those same guidelines.

7. Potential outcomes associated with using this legal option;

The remedies that may be provided by the British Columbia Human Rights Tribunal are outlined in Section 37, specifically 37(2)(d). Remedies for successful complaints may include restoring the right or privilege that was removed from the complainant as a result of the discrimination, compensation for lost wages or expenses incurred as a result of the contravention, and compensation for personal injury.

8. Potential positive and negative aspects associated with utilizing the piece of legislation and associated procedures;

One of the positive aspects of seeking resolution by way of the British Columbia Human Rights Tribunal is that the agents handling the complaint are nearly guaranteed to be qualified to do so, in contrast to union grievance procedures whereby the possibility exists that union representatives are inexperienced. However, possibly because the procedure is more formal than the grievance process, the Tribunal itself acknowledges that pursuing a complaint with the Tribunal is more successful when done with the assistance of legal counsel. The 2007-2008 Annual Report of the British Columbia Human Rights Tribunal (2008, p. 18) reveals

that "[t]here is a correlation between success and legal representation: represented complainants succeeded in 55% of the hearings but unrepresented ones succeeded in only 39%." It is possible, however, that individuals consulting legal counsel prior to proceeding with a complaint may have decided, based on that counsel, not to file a complaint, a factor which may have a bearing on the success rates reported for complainants supported by legal representation. In any event, the report also noted that respondents are more successful when obtaining legal counsel, which has a direct bearing on the complainant's likelihood of success. The observation is made in the report that more resources are required to assist those who participate in the hearing process without benefit of legal counsel.

D. Other Relevant Legislation: Federal Legislation, British Columbia Workers' Compensation Board (WorkSafe BC) and Canada Employment Insurance

As mentioned earlier in this chapter, women employed in federally-regulated workplaces are governed by federal rather than provincial legislation, namely the *Canada Labour Code* (1985) which parallels the British Columbia *Labour Relations Code* (1996), and the *Canadian Human Rights Act* (1985) which is similar in nature to the British Columbia *Human Rights Code* (1996). Women in federally-regulated workplaces may file complaints of discrimination with the Canadian Human Rights Commission, which administers the *Canadian Human Rights Act* (1985). They may also file grievances with their union, which are dealt with in accordance with the Canada Labour Code (1985) and the Canada Industrial Relations Board procedures.

Women who are harassed in the workplace may qualify for compensation from Canada Employment Insurance (Aggarwal & Gupta, 2006) or WorkSafe BC if

their situation meets the criteria necessary to qualify for those benefits. These potential options are somewhat different from the other legal options discussed, as they require that the situation warrant a woman's absence from work. However, the literature indicates that, in many cases, the situation is so dire for women facing workplace harassment that some lose or leave their jobs (Carr et al., 2004; Aggarwal & Gupta). The potential for these options to provide relief for women facing workplace harassment merits further investigation.

In this chapter, some of the legislative options available to women seeking redress for workplace gender harassment have been summarized. I have highlighted aspects of the legislation I thought would be most important to women and those advocating for them who seek information about whether and how to proceed with filing harassment complaints in legal fora. This information is intended to be a guideline only, as many factors influence the experience a woman may have when attempting to obtain redress for workplace harassment. Some of the potential barriers and concerns related to complaint processes are elucidated in Chapter Five. For instance, issues regarding definitions of harassment, communication of procedures, and a union's duty of fair representation are discussed, and recommendations based on the analysis of the legislation and the experiences of the research participants are imparted.

CHAPTER FIVE

DISCUSSION OF RESEARCH FINDINGS

Rather than containing formal research conclusions, this closing chapter synthesizes the research findings in the literature and the critical analysis of the legislation with the experiences of the individual research participants. It must be noted that, with regard to the legislation referred to in this thesis, the analysis involved examining the legislation as it is written. Whether the procedures, in fact, operate as outlined on paper was investigated by analyzing the legislation from a critical feminist theoretical perspective and, to the extent possible, incorporating the insights of the participants, but those working in the field were not consulted. Participants' responses are organized according to themes that emerged during the course of the research, as well as concerns that were expressed by the participants. What I expected to find, based on the literature and my personal experience, is also presented in some cases.

It is important to preface these findings with the comment that none of the women who participated in this research study pursued formal legal options beyond their workplace harassment and discrimination policies. This finding is consistent with what is reported in the literature, that a very small percentage of women actually file harassment complaints (Aggarwal & Gupta, 2006, p. 60). Women do not proceed for any number of reasons (Aggarwal & Gupta), one being that they do not know or understand their options for doing so (Carr et al., 2004, p. 11): "[w]omen also expressed a need for information about what legal avenues they could pursue with their complaints of workplace harassment." I attempted to obtain participants who

had been through a significant legal process, such as arbitration or a human rights complaint, but none were forthcoming. One woman who had been through at least one of these processes was contacted directly, but she declined to participate. As a result, the participants' lack of experience may have resulted in their inability to offer critical analysis or commentary on the processes used for some of the legal options. That being said, they had sought information about how to obtain resolution, so nonetheless were able to provide a wealth of information. During the course of conducting and transcribing the interviews and writing this thesis, I came to realize that women may really need information most urgently at the "front end" of the process, when they are just in the initial stages of seeking information about how to proceed. The participants offered substantial contributions in that regard.

In this chapter and in Appendix D, entitled "Analysis of the British Columbia *Labour Relations Code* (1996) and British Columbia Labour Relations Board Procedures," I offer my critical observations regarding some of the legislative options available to women seeking redress for workplace gender harassment. The bulk of the commentary provided relates to the British Columbia *Labour Relations Code* (1996) and Tribunal procedures, as a result of the fact that this thesis focuses on women in unionized workplaces and this is where my interest lies. I was not satisfied with the options presented to me when I approached my union about personal harassment I was experiencing on the job. This research began with my interest in the ability of unions to assist women, given the union's strategic and convenient position of being located physically in the workplace, with women thus having access to union representatives and resources.

Owing to the fact that the participants in this research study were employed in provincially-regulated workplaces, as are, I anticipate, the majority of unionized employees in British Columbia, the corresponding federal legislation (*Canada Labour Code* and the *Canadian Human Rights Act*) was not critiqued. Information regarding those pieces of legislation, however, was included in the information booklet, to be discussed later in this chapter, to the extent possible. I concede that my critical analysis of the legislation was informed by my life experiences and perceptions. Some might consider this bias. I fully acknowledge that, given my lack of impartiality regarding the subject and the fact that I am not a lawyer, some areas of the legislation may not function in a manner consistent with my expressed concerns. However, as there exists a possibility, no matter how minute, that the processes could operate as I suggest, I feel compelled to offer commentary despite the risk of being perceived as overreacting or suspicious. Furthermore, although I am unqualified to comment on the likelihood of the scenarios I present occurring, if they unfold as I suggest possible even once, this will be detrimental for at least one woman, and maybe more women, attempting to achieve resolution for workplace gender harassment. This would not be so concerning if not for the significant and often devastating impact gender harassment in the workplace has upon women.

The information presented in Chapter Five is organized according to themes identified from the critical analysis of the legislation and the participant interviews. I have also attempted to organize the material in a linear manner according to the types of issues women could expect to encounter in the process of seeking information about how and whether to proceed with filing a complaint, as well as

according to legal option. Recommendations have been offered in association with expressed concerns when possible. Consistent with a feminist standpoint theory approach, it must be noted that the recommendations provided are based only on a personal review of the literature and legislation, as well as the contributions of three individual research participants. Thus, the recommendations may not necessarily be generalized and in no way should they be construed to be applicable to each and every woman's situation and workplace.

Themes and Concerns Identified

A. Clarifying and Communicating Definitions of Harassment and Discrimination in Workplace Harassment and Discrimination Policies and Other Legislation

In Chapter Two, it was noted that women seeking information about legal avenues for resolving workplace harassment should not rely too heavily on definitions regarding workplace harassment in determining whether the behaviour they were subjected to constituted gender harassment. However, the definitions of harassment and discrimination contained in workplace harassment and discrimination policies, as well as other legislation, are important. Perhaps if the definitions and behaviours referred to in legislation were more well defined or explained, and could therefore be relied upon to a greater extent to predict the likelihood of a complaint's success, they would be more useful. Simply providing the definitions in a piece of legislation (in this case, workplace harassment and discrimination policies) did not seem to be sufficient to permit the participants in this research study, who are intelligent women, to determine whether the behaviour they were subjected to met those definitions, which seemed to contribute to their

reluctance to proceed. Two of the three participants expressly indicated that they felt the harmful behaviour they experienced was directed at them on account of being women. However, they were uncertain at the time they were being harassed whether the behaviour constituted harassment based on their understanding of the definition of harassment. The decision about whether or not to report sexual harassment is influenced by one's *interpretation* of the definition of sexual harassment (Wilson, 2000; emphasis added). Participant 2 suggested that:

> we go through our day-to-day life with that kind of stuff happening to us, and it happens so much, that we forget that it's not okay. Right? And, it would be nice to have some information somewhere that had, you know, specific (pause) incidences, you know, little stories even, or something that a person could go to and, and, you know, see that, okay, when this type of thing happens, no, that's not okay, you know what I mean? . . . Because, what is harassment, how do you define it? Well, I'm sure there is a very strict definition, but there's also all this other stuff that it would be really nice to be able to look at . . . . Because, if you did choose to go to your human resources or whoever else, and that's the, I think, the hard part is, well, "he treats me like crap," well, what does that mean, you have to have some kind of . . . , you have to have some kind of specifics, right? You know, [the response will be] "that's nice, I can't really help you," you know, "people treat me like crap, too, but you know, it's part of the job."

In the workplace of Participant 1, one male employee referred to women as "clams" and "beavers." Although this situation would most likely be determined by a legal body to be sexual harassment based on the language used by the perpetrator, the case of Participant 2 was not so obvious, despite the fact that it appeared, and she clearly stated, that she was demeaned and devalued on account of being a woman, which does constitute sexual harassment according to legal precedent (Aggarwal & Gupta, 2006).

These examples demonstrate that sexual and gender harassment can be subtle and difficult for a woman to pinpoint as discrimination based on gender. It

might be difficult to establish in a legal hearing that the behaviour inflicted upon Participant 2 was gender discrimination or sexual harassment as opposed to personal harassment. Documenting the behaviour accurately and appropriately is crucial to proving one's complaint (Aggarwal & Gupta, 2006), which is undermined if women are unable to clearly articulate what has happened to them. Furthermore, because women are socially conditioned to accept such behaviours, they may be reluctant to label the behaviours as harassing (Wilson, 2000). Esoteric definitions only serve to add to these difficulties and become a barrier to reporting. If women were aware of the types of behaviour that are likely to constitute gender harassment, they might be better able to document such encounters and more liable to pursue resolution.

Lack of clarity of definitions may also discourage women from reporting harassment because they do not allow for a woman to predict the likelihood of success of filing a complaint. Participant 2 relayed, a sentiment supported by Aggarwal and Gupta (2006) and Carr et al. (2004), that there is a cost to reporting harassment. Upon filing a complaint, the alleged harasser will become involved, possibly complicating the woman's workplace situation (Aggarwal & Gupta, 2006; White, 1993). The woman's circumstances will be exposed, potentially causing her embarrassment or ridicule, which Aggarwal and Gupta (p. 60) cite as a major reason (43%, according to the Working Women's Institute survey) women fail to report harassment. Aggarwal and Gupta also note that women are concerned about attracting damaging publicity, a sentiment with which Participant 3 concurred:

> It's the public perception. More than anything else, it's the public perception. You're a woman, doing a man's job, and if you complain about

> it, even a little bit, you're going to be called incompetent. I've been doing it for 15 years, I'm not incompetent. I work for companies that call me back on a regular basis, I'm a good [occupation removed to protect participant's anonymity]. . . . And yet, I know that if I was to complain, somebody would write into a paper and say, "she just can't do the work." And you know, I don't, I honestly don't know if standing in a public arena like that, I don't know if any of my brothers [fellow union members] have it in them to stand up for me in that public arena. You know, I don't know that anybody would come to my defence and say "that's not true, she's not incompetent." And I don't know, I don't know who you could ask to stand in that arena with you.

Participant 3 also made the following observation:

> And the other thing was that, just around that time, just previous to that, there had been a firefighter who had, um, who had made a harassment charge somewhere. Now I think this was actually a bush firefighter, I don't think this was, um, like a city firefighter. But, she had, she had made a charge of harassment and the media was absolutely stuffed full of opinions about the fact that she had raised a stink because she was in fact incompetent, couldn't do her job, and that was why she wanted to bring this guy up on charges and get a bunch of money out of the system. It wasn't about her rights, it wasn't about being treated well, it was about the fact that she really, really when it gets down to it, she shouldn't have been in a man's world. And more than anything in the world, that's the reason that I didn't do anything about it.

These comments support the notion that women working in nontraditional occupations seem to be aware that they are highly visible and that filing a complaint may lead to being even more closely scrutinized, possibly being perceived as incapable of doing a "man's job." Furthermore, Participant 3 alludes to the possibility that her co-workers, while lending support in private, may not be willing to do so when it matters most. This concern is consistent with that expressed by participants in the study undertaken by Carr et al. (2004). Given the risks inherent in proceeding with a complaint of harassment or even divulging one's circumstances to a body established to provide remedies, women may be unlikely to proceed without having some idea of the prospect that their complaint will achieve resolution. Vague or

shallow definitions do nothing to enhance a woman's ability to ascertain whether a resolution is possible. Unfortunately, the fact that the definitions are legalistic may make it difficult to elucidate the definitions for people in a manner that is useful for them. Nonetheless, an attempt should be made. When definitions lacking depth and precision are taken into consideration along with the other concerns expressed, it is understandable that women are reluctant to report harassment.

Despite the lack of clarity regarding definitions, Participant 2 indicated that her workplace harassment and discrimination policy assisted her and she was satisfied with the results of seeking resolution in this way. She added, however, that the person from Human Resources who helped her did not follow up to see how she and her co-workers were faring after the training, which she may have benefited from. Finally, comments made by Participant 2 would suggest that prominently displaying harassment and discrimination policies and embedding those policies in the culture of the workplace might lead to employees discussing the policy:

> When we became [workplace name removed to protect the participant's anonymity] [as a result of restructuring] we, part of it was this workplace policy. Before that, I'm sure there was one somewhere buried somewhere, but it became an important part of, you know, the culture of [workplace name], and so it was easy to look at this document and go, "wow, this is not what, this is not okay, look at the policy," right?

In turn, discussion may result in raised awareness about harassment, possibly leading to employees having an increased understanding of the behaviours constituting harassment. Raising awareness about harassment is one of the recommendations made in the report by Carr et al. (2004). Incorporating workplace harassment and discrimination policies into the culture of the workplace may also assist employers to decrease harassing behaviour in the workplace, thereby

improving the work environment and in the process protecting themselves to some degree from legal liability (Aggarwal & Gupta, 2006). The preceding examples demonstrate the importance of employers and others responsible for administering legal options providing clear definitions and examples in harassment policies and other legislation of the types of behaviour constituting sexual harassment and gender discrimination. Without this information, women may be unaware that what they are experiencing is harassment or discrimination, or may be reluctant to seek resolution.

Recommendation: That workplace harassment and discrimination policies be prominently displayed. Further, that policies and legislation designed to address sexual harassment or gender discrimination contain clear definitions of the types of behaviour constituting harassment and discrimination, and that employers and others in a position to do so educate *all* members of the workplace (Participant 2) through the use of scenarios and other tools to identify, and differentiate between, gender discrimination, sexual harassment, and personal harassment. This recommendation is consistent with recommendations made by the participants in the study conducted by Carr et al. (2004, p. 83) who suggested that education might help women "name" the problem as well as bring it into the open. Carr et al. also propose several other useful suggestions regarding workplace harassment and discrimination policies. One of particular interest is the recommendation (Carr et al., p. 95) that definitions include "an understanding of power relations and how these can be exploited." Given the history of the oppression of women in the workplace, as discussed in Chapter Three, this would be a particularly beneficial component to

incorporate into a workplace harassment and discrimination policy and other legislation designed to address harassment or discrimination. The element of workplace exploitation was also raised by Participant 1 who suggested that, because young women coming into the workforce are at their most attractive and most vulnerable, and as they are not necessarily aware of their rights as workers, young workers in particular should be educated about workplace rights. On the recommendation of Participant 1, the education undertaken with regard to harassment should be tailored to the employees in the specific occupation or workplace: "[y]ou want to, you want to teach firemen not to be gender discriminatory, you have to teach them in their language. You have to teach mill-workers in their language. You can't teach them like they're a group of counselors, because they're not. And if you're not speaking to them in their language, they're not getting the message." This participant added that ". . . a lot of the training that goes on is focused poorly and . . . they disregard it, and . . . the only way that they're learning is by watching their peers get fired because of it." Including reference to gender relations in education related to labour relations and workers' rights would be ideal.

None of the research participants pursued a complaint with the British Columbia Human Rights Tribunal. However, in reviewing the British Columbia *Human Rights Code* (1996), I noted two things in particular. First, the information available to potential complainants is much better organized than the information on the British Columbia Labour Relations Board website, although that could be as a result of the fact that the Board anticipates the majority of those seeking information from its website to be either unions or employers, not individuals. Nonetheless, the

information was poorly organized. The second matter of interest is revealed in the recommendation below, and is related to the legal connection between sexual harassment and gender discrimination.

Recommendation: That the British Columbia *Human Rights Code* (1996) be enhanced with the inclusion of language similar to that contained in Sections 14(1) and (2) of the *Canadian Human Rights Act* (1985), whereby it is explicitly denoted in Section 14(1) that discrimination on the basis of sex amounts to sexual harassment and *vice versa*: "to harass an individual based on a prohibited ground of discrimination" is considered to be "a discriminatory practice," and Section 14(2) adds that "sexual harassment . . . shall be deemed to be harassment on a prohibited ground of discrimination." This language would not be inconsistent with the intent of the *Code*, which prohibits discrimination on the basis of sex, and would provide clarity about the nature of sexual harassment.

B. Clarifying and Communicating Union and Other Legislative Procedures Associated with the Filing and Hearing of a Complaint

Unions have established a reputation for being defenders of workers' rights (Cockburn, 1991; White, 1993). The Canadian Union of Public Employees (CUPE) maintains an "Equality Statement[1]," which is often read at meetings and would seem to suggest that CUPE representatives champion women facing workplace harassment. However, my own experience in addition to some of the literature I reviewed (for instance, see Cockburn, 1991 and White, 1993) suggested that this is not necessarily always the case. As mentioned in the introduction to this chapter, much attention was placed on collective agreement

[1] Please see Appendix A for a copy of this document.

grievance procedures, for several reasons, including that unions are in a unique position to support women. Although employers are positioned to help their employees with regard to workplace harassment, which is why workplace harassment and discrimination policies were analyzed, unions are legal representatives of the employees in their bargaining unit when those employees are impacted by a dispute arising out of a collective agreement, including workplace harassment. Therefore, unions should be capable of providing, and women should expect, adequate representation. Thus, union-related legislation and procedures were analyzed in the greatest level of detail. It is my hope that providing a deep level of analysis of the procedures most accessible to unionized women seeking to address workplace harassment will assist not only the women using them but union representatives who are in a position to support these women.

Accounts exist of women failing to receive the assistance they should have from their unions because unions have discriminated against their women members (Cockburn, 1991; White, 1993), which happened to Ms. Moznik. Thus, I was frankly surprised when two of the participants in this research study, rather than reporting that their unions denied them assistance, expressed concern about the union intervening without their consent. Participant 2, when speaking about the fact that she decided not to pursue the matter of harassment with her union, was concerned not only about a grievance being taken out of her hands, but even that bringing her situation to her union's attention might become an "out of control freight train:"

> Yeah, and I think with the, with the union representation what worries me about it is that, um, once it gets started, it's going to be a freight train that I have no control over and the union, I mean, and it's a good thing, they support all of their members and so the people that I'm feeling harassed by are also union members so I'm not really convinced that the union will do a good job looking at me and supporting me . . . I mean, their job is to support everybody who works for the union so, um . . . yeah. . . . I think that's the hardest thing, I have no idea what it would look like if I actually, you know, went forward with a harassment charge or (pause) . . . yeah, I have no idea what it would look like, and I get the feeling it would be a completely out of my hands, out of control freight train.

Participant 3 stated a similar concern (emphasis hers):

> And the reason I didn't do anything -- there were 2 reasons that I didn't do anything. We had a business agent in my union at the time that was absolutely *chomping at the bit* to get me into court on a harassment charge. He wanted more than anything in the world to be able to hold me up and use me as some kind of a human rights tool to give it, to give shit to, to the employers. He hated employers and he hated companies, and he wanted to use me to screw somebody over. And I didn't want any part of that.

Rather than indicating doubts about adequate union representation, these participants were concerned about their potential lack of control over the complaint process and potential consequences of that reality, which is understandable given that women who are being harassed are already in a position of being power-less in relation to someone in their workplace.

Apart from her concern that her union would take her issues forward without her consent, the comments of Participant 2 noted above point to a number of other union-related issues. First, collective agreements and other legislative options may not provide sufficient detail regarding the complaint procedure, possibly contributing to a lack of reporting or frustration with the process, a concern which was also mentioned in the report by Carr et al. (2004). Participant 2 expressed the trepidation

she felt regarding the prospect of filing a complaint, which was impacted by the vagueness of the procedures:

> I don't think I ever have gotten good information about if I wanted to go forward with a complaint what that would look like. I don't think I have that information. And yeah, of course that would be important to me. If I knew what it was going to look like, then I'd be able to choose, right? Because there's a cost to going forward with something like that. There's a cost, so, yeah. Yeah, yeah, I'd have to know what that looked like, for sure.

Collective agreements typically describe the grievance process to the extent that those taking part in the decision-making process at the respective steps and timelines for proceeding are delineated. However, to improve upon women's understanding of the grievance process, unions could be communicating to their members clearly about whether a grievance will be pursued if someone brings a matter forward just for purposes of discussing or seeking advice about whether a resolution could potentially be obtained. Second, according to jurisprudence related to Section 12 of the British Columbia *Labour Relations Code* (1996), which will be discussed shortly, unions have the sole authority to move forward with a grievance, essentially leaving women without a voice in the process and decision unless the union chooses to allow it. The following excerpt from the "Duty of Fair Representation" (Section 12) Bulletin[2] on the British Columbia Labour Relations Board website states the following: "[t]he union has no obligation to pursue a grievance when the union and the employer agree on the meaning of the terms of the collective agreement, unless a complainant is able to establish the employer and union have conspired against the complainant in agreeing to the interpretation."

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[2] This document was accessed on March 2, 2009, at http://www.lrb.bc.ca/bulletins/summary.htm ("Union Has the Right to Decide Not to Arbitrate" section, ¶ 3).

Such a claim would likely be extremely difficult for a complainant to "establish." This is an issue in general, but can be particularly problematic for women working in nontraditional occupations who, in addition to potentially facing discrimination by their co-workers may also be subjected to discriminatory treatment by their employers and union representatives. Unions are also under no obligation to refer a grievance to its final stage of resolution, being arbitration. The case of *Marko Bosnjak, IRC No. C221/89* (p. 4, as cited in British Columbia Labour Relations Board u.d., "Union Has the Right to Decide Not to Arbitrate" section, ¶ 4; emphasis added) highlights the fact that the union has the right to decide not to arbitrate:

> . . . *A union may refuse to process a grievance to arbitration where the grievance raises a matter that is not in dispute between the parties to the collective agreement.* In other words, where the grievor claims a right in the collective agreement which, based upon both the employer's and the union's interpretation, cannot be sustained, there is no obligation to pursue the matter to arbitration . . . .

It is understandable that arbitration referral rights reside with the union and the employer. However, in nontraditional workplaces where discrimination against women may be embedded in the culture of the workplace, as it was with Richmond Fire-Rescue Services (Paish, 2006; Ready, 2006), the employer and union may both interpret gender harassment as innocuous or even nonexistent and thus a matter not in dispute between them, regardless of how the woman being harassed might feel about the situation. Of course, the union is also required, in accordance with Section 12 of the British Columbia *Labour Relations Code* (1996) to act in a manner that is not "arbitrary, discriminatory or in bad faith." Unfortunately, it is not always simple to sort out Section 12 matters, and complaints in this regard are typically decided in favour of the union (British Columbia Labour Relations Board Annual Report, 2007).

At any rate, I was delighted to discover that the participants were aware of the fact that the union and the employer were the only entities with legal authority to proceed with a grievance. Unfortunately, having this information in the absence of further details about how her concerns would be handled if she simply wanted to ask the union for advice may have prevented Participant 2 from even approaching her union for help. The final matter raised by Participant 2 was the fact that unions are required to represent all their members, which, as Aggarwal and Gupta emphasize, in harassment cases, is "not a very happy situation for the union," and that as a result, unions often attempt to address these situations "within 'the four walls' of the union" (2006, p. 144). One could imagine the tendency to proceed in this manner being to the detriment of the grievor if the union simply wanted to make the matter disappear.

Recommendations: That representatives and agents communicate grievance and other hearing procedures clearly and comprehensively. Further, that union representatives clearly communicate to members of their bargaining units whether they may seek advice or otherwise divulge details of their situation to their job steward or union representative in confidence and be guaranteed that a grievance will not be pursued without their consent. Additionally, that union representatives plainly communicate the potential implications of the union being legally required to represent both the grievor and alleged harasser in situations where both are members of the bargaining unit.

In contrast with the concerns just presented, the fact that the union and the employer are the only entities legally entitled to proceed with a grievance, which was

alluded to by Participant 2, may be problematic for grievors who wish to pursue grievances. Although grievance procedures are typically contained in collective agreements, information outlining how the union determines whether to proceed with a grievance, and how far, is generally not. This decision and the criteria by which this is determined are generally at the discretion of the grievance committee chairperson, union executive, or other union officers acting on behalf of the union. If the union is unsupportive of the grievor's claim, it is unlikely the grievor will achieve satisfaction with the process, and the grievance may not even move forward. If the grievor overcomes the initial hurdle and the union agrees to pursue her grievance, she will have to endure three or more additional steps, dealing with several hearings and decision-makers along the way, before her grievance may (or may not) be taken to arbitration, again at the discretion of her union. For women who have been harassed and therefore may already be feeling frustrated, demoralized, and that their personal power has been compromised, dealing with union grievance procedures may take an additional toll.

Recommendation: That union representatives dealing with grievance matters, as a result of the power they hold relative to their members when it comes to pursuing grievances, commit to actively seeking and adhering to, to the best of their ability, the input of women seeking information or resolution for workplace sexual harassment or gender discrimination. Further, if a union decides not to pursue a woman's harassment grievance, that it clearly indicate why and how that decision was taken. Finally, that the British Columbia Labour Relations Board consider organizing the information documents contained on its website in a manner similar to

those accessible on the website of the British Columbia Human Rights Tribunal or creating a separate section on the website for people seeking information regarding general grievance procedures.

C. A Word About Section 12 of the British Columbia *Labour Relations Code* (1996) and a Union's Duty of Fair Representation

Except with regard to the element of discrimination, women who feel they have received representation from their union that is "arbitrary, discriminatory or in bad faith" from their union have only one legislative option available to them[3], that of filing a complaint of "Duty of Fair Representation" in accordance with Section 12 of the British Columbia *Labour Relations Code* (1996). Examining Section 12 complaints (accessible on the Labour Relations Board's website) in which an individual claims that he or she was not adequately represented by his or her union is enlightening. Statistical data in the 2007 Annual Report of the British Columbia Labour Relations Board (2008, p. 24) indicates that, between 1997 and 2007, approximately forty to one hundred ten Section 12 applications were received each year, with no more than about eight in any given year being decided in favour of the complainant. The burden is on complainants to prove that the union breached Section 12, and in 155 decisions reviewed personally on the Labour Relations Board's website, which originated between 2000 and 2008, the overwhelming majority of complainants represented themselves at the tribunal. Perhaps they might have fared better with legal representation. Suffice it to say that, lest women be quick to jump to the conclusion that Section 12 ensures that their union will provide

[3] If women feel their union has discriminated against them on account of gender, they may file a complaint in accordance with Section 14 of the British Columbia *Human Rights Code* (1996), but as far as representation alleged to be "arbitrary" or "in bad faith," Section 12 of the British Columbia *Labour Relations Code* (1996) is the relevant legal avenue.

them with representation sufficient to ensure resolution for workplace harassment, they are mistaken. Section 12 only requires that the union represent their members in a manner that is not arbitrary, discriminatory or in bad faith, not that their decisions be correct. The authority granted to unions and the British Columbia Labour Relations Board to regulate workplace matters, including union grievances related to harassment, is extensive. Unfortunately, the statistics in relation to Section 12 applications demonstrate that a union's level of accountability to its members may not be nearly as high, nor is it required to be by the British Columbia Labour Relations Board in accordance with Section 12 of the British Columbia *Labour Relations Code* (1996). Further discussion regarding Section 12 is contained in Appendix D.

Recommendation: That the British Columbia Labour Relations Board consider creating a section on its website for people seeking information regarding the nature and quality of assistance union members should expect to receive from their union representatives. Further, consistent with what has been recommended by Fiona McQuarrie (u.d., p. 13), the British Columbia Labour Relations Board communicate more clearly on its website a union's obligations to its members with regard to Section 12 and the requirements that must be met in establishing a Section 12 complaint.[4]

[4] Upon accessing the British Columbia Labour Relations Board website (http://www.lrb.bc.ca/) on April 26, 2009, it was discovered that a document entitled "Section 12 Guide" had very recently been added to the "Information Bulletins." This document provides much more detailed information regarding Section 12 complaints than was previously contained on the website, potentially addressing this recommendation.

Information Booklet

As mentioned in Chapter Two, one of the major goals of this research was the development of a booklet to inform women of their options for proceeding with harassment complaints. The text of this booklet, in its original unformatted state, is contained in Appendix H, as are introductory comments to the reader and advocates who may find the booklet useful. Rather than attempting to include an overwhelming amount of information in the booklet, I was of the opinion that women would benefit from receiving the points likely to be the most beneficial when initially seeking resolution for workplace harassment, and information about where they can find additional resources. Nonetheless, even this amount of information turned out to be extensive. Participant 1 therefore recommended providing the booklet in two formats, the one contained in Appendix H and a shorter brochure version, which will be pursued.

Next Steps and Recommendations for Further Research

No plans have yet been made to provide copies of the thesis or recommendations to any agencies or individuals, except to the West Coast Women's Legal Education and Action Fund who have expressed an interest in seeing the research. Prospects for publishing and disseminating the information booklet and brochure will be investigated. In addition, publication in a feminist policy or legal journal, of an article based upon the thesis research, may also be sought.

Although I recognize there other ways of approaching or attempting to address workplace harassment, my comments regarding potential next steps are

limited to legislative options, as that is the focus of this research. I mentioned elsewhere that the ability of the British Columbia Workers' Compensation Board and Canada Employment Insurance to provide assistance to women facing workplace harassment should be investigated. In discussion with Dr. Si Transken in the course Gender Studies 609 which took place in February, 2008, she suggested that some of the acts perpetrated upon Ms. Jeanette Moznik were, in fact, more than harassment or discrimination, they amounted to crimes of hate. Perhaps when possible and appropriate, behaviour of that nature perpetrated against women should be pursued criminally in accordance with the relevant section of the Criminal Code. Generally, the investigation of creative or previously unexplored solutions to workplace harassment would be beneficial.

The analysis of the legislation that I have provided could benefit from further evaluation according to the method of "institutional ethnography" as imparted by researcher Dorothy E. Smith in her text entitled "Institutional Ethnography: A Sociology for People" (2005), upon which I would like to comment briefly. From a postmodernist position, which Smith names as standpoint, she outlines a method whereby activities of individuals in institutions can be "mapped" with the goal of demonstrating how their activities are "coordinated" in relation to, or by, language and texts within institutions. One of the major points Smith (2005) makes is that the "ruling relations," which Smith (2005, p. 227) defines as "objectified forms of consciousness and organization, constituted externally to particular people and places, creating and relying on textually based realities," are positioned to subsume

the subjective experiences of individuals within organizations, causing individuals and their activities or experiences to essentially disappear from the record.

The research of Ellen Pence (2001), outlined by Smith (2005, p. 159), with regard to the tracking of "the sequence of institutional action that constitutes a case of domestic abuse" is a method that could be utilized to uncover the coordination of activities related to sexual harassment and gender discrimination law. However, as Smith (2005, p. 159) states, ethnography presents "more-than-can-be-used material," and because my desire would be to map the process to its linear conclusion (court, board or tribunal decision), the amount of research such a process would entail is beyond the scope of this thesis. Furthermore, Smith (2005) concedes that the individuals whose coordinating functions and experiences are relevant to the problematic are sometimes uncooperative, which could present obstacles. On the other hand, mapping legal options for responding to gender harassment, even partially, could prove useful. As Smith (2005, p. 221) denotes, Pence's research "has been used to locate a number of places where it has been possible to make changes that contribute to increasing the safety of women who are subject to violence from their spouses." Such a process undertaken in relation to sexual harassment or gender discrimination law and associated processes could serve to pinpoint areas where changes would be beneficial.

Finally, looking closely at judicial decisions with regard to sexual harassment claims or lawsuits would be useful in the sense that judges' decisions could be explored from a critical, feminist theoretical perspective. Case law is most likely to be associated with non-unionized workplaces, as unionized employees are, under most

circumstances, required to have their complaints heard by their unions or the British Columbia Labour Relations Board. Nonetheless, undertaking this exercise may shed light on attitudes possessed by the judiciary and their use and interpretation of the legislation and case law. It may also serve to provide a glimpse into whether there are circumstances in which unionized women could access the courts, such as with regard to claims of constructive dismissal, for instance. Examining court decisions and the capacity of the courts to provide resolution for workplace gender harassment might also illuminate whether women could expect legal decisions to provide any measure of satisfaction with regard to their claims of workplace harassment.

Final Thoughts

Given the historical and structural context in which the legislative options evaluated in this thesis exist, it cannot be relied upon that recommendations arising from this thesis research will be recognized by those with the authority to implement them. However, it is possible that those looking for information on harassment in unionized workplaces in British Columbia may access the thesis and make use of its contents. It is also desired that those in positions to support women who are harassed will make use of the information booklet and brochure and provide them to women seeking their assistance. By offering the booklet to those advocating for women seeking redress for workplace gender harassment, it is hoped that the advocates will be better positioned to assist their clients, and that women will subsequently be more informed with regard to their options. Union representatives and workplace harassment policy advisors may sit in particularly strategic locations to rely upon and disseminate the information booklet and brochure.

The intent of conducting this research with women who have experienced workplace gender harassment and providing the results in a booklet is so the "marginalized and ignored," whose interests may not be reflected in the law (Lacey, 1998, p. 28), might at least have better access to the law. Schafran (1997, p. 224) suggests that the law as it is currently designed functions below an optimal level for women:

> As a group we are perceived as less competent than men; the context of the harms for which we seek redress in the courts is often completely foreign to the trier of the fact; and even when the harm is acknowledged, it is often minimized by a *de minimis* punishment for those who injure us.

Schafran has a valid point. Law and the procedures associated with accessing legal resolutions, owing to law's cultural (Bracey, 2006) and gendered nature, may simply establish and perpetuate the *illusion* that women can achieve resolution for workplace harassment. In the words of Dr. Judy Hughes (personal communication, June, 2008), in some cases law can be equated to "pretty wallpaper used to cover up ugly cracks."

Certainly, legislation may serve to some degree to present the appearance that people have avenues by which to address social injustices that they do not have. Lending credence to this notion is the fact that the results obtained by those attempting to use legal options, at least with regard to workplace gender harassment, seem to fall short of expectations. On the other hand, law may bestow some benefits for women seeking redress for gender harassment. The potential inefficacy of legislative options apparently designed to provide redress for workplace

gender harassment may result partly from the lack of legal knowledge of those attempting to make use of the law (Carr et al., 2004) and those assisting them.

Lorde (1983, p. 98) has suggested that "[t]he master's tools will never dismantle the master's house," which could lead one to believe that attempting to operate within a patriarchal legal system to seek redress for workplace gender harassment is counterproductive or unlikely to achieve results. I acknowledge the probability that the interests of women have been excluded from the legal system to some extent, and that the suggestions offered in this evaluation of the legislation are unlikely to "dismantle the master's house" (Lorde, p. 98). However, providing information and education about the law to those seeking legal resolution for gender harassment may allow them to more effectively use the law to their advantage if they choose to proceed in that manner. It is hoped that the findings of this research will give unionized women employed in nontraditional professional occupations and other workplaces in British Columbia at least some of the tools they need to decide whether and how to legally challenge workplace harassment. After all, the ultimate accomplishment would be that all women enjoy unfettered access to meaningful and gainful employment of their choice. Whether this opportunity is more likely to be realized with the use of a sander to smooth the rough edges, a screwdriver to dismantle and reconstruct, or a hammer to drive the point home in a more forceful manner is a matter that remains open to debate.

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APPENDIX A

CANADIAN UNION OF PUBLIC EMPLOYEES EQUALITY STATEMENT[1]

Equality Statement
October 16, 1999 12:00 AM

Union solidarity is based on the principle that union members are equal and deserve mutual respect at all levels. Any behaviour that creates conflict prevents us from working together to strengthen our union.

As unionists, mutual respect, cooperation and understanding are our goals. We should neither condone nor tolerate behaviour that undermines the dignity or self-esteem of any individual or creates an intimidating, hostile or offensive environment.

Discriminatory speech or conduct which is racist, sexist, transphobic or homophobic hurts and thereby divides us. So too, does discrimination on the basis of ability, age, class, religion and ethnic origin.

Sometimes discrimination takes the form of harassment. Harassment means using real or perceived power to abuse, devalue or humiliate. Harassment should not be treated as a joke. The uneasiness and resentment that it creates are not feelings that help us grow as a union.

Discrimination and harassment focus on characteristics that make us different; and they reduce our capacity to work together on shared concerns such as decent wages, safe working conditions, and justice in the workplace, society and in our union.

CUPE's policies and practices must reflect our commitment to equality. Members, staff and elected officers must be mindful that all sisters and brothers deserve dignity, equality and respect.

PAUL MOIST
National President

CLAUDE GÉNÉREUX
National Secretary-Treasurer

[1] Canadian Union of Public Employees (1999).

APPENDIX B

A SAMPLE ALTERNATIVE POLICY TO PREVENT GENDER-BASED DISCRIMINATION IN THE WORKPLACE

Policy rationale:

This policy is based on the notion that all employees are valued, and thus must be treated with dignity and respect in this workplace. Therefore, acts that infringe upon an employee's right to work in an environment free from sexual harassment (viewed by the *British Columbia Human Rights Code* (1996) to be discrimination in employment based upon gender) will not be tolerated.

Policy enforcement procedure:

A monetary penalty is attached to behaviours considered to infringe an employee's right to be employed in a workplace that operates free from harassment and discrimination. The employer strives to ensure that, through education and other workplace initiatives, incidents of harassment can be addressed, in consultation with the Harassment Policy Advisor, prior to this stage. It is also acknowledged that this may not be possible in all cases. Employees who face harassment or discrimination in the workplace are thus encouraged to document situations, which will form the basis of the complainant's case with the Harassment and Discrimination Policy Panel ("The Panel"). The Panel will consist of the following individuals: the complainant, the respondent, the Harassment and Discrimination Advisor, and a member of the employer's Equity Advisory Team.

COSTS ASSOCIATED WITH GENDER-BASED DISCRIMINATION OF VALUED EMPLOYEES

The penalty associated with each behaviour (represented by a code) is ***per incident***. Please note that these behaviours should ***not*** be perceived to be in rank order of severity or harm caused, and that being found liable upon more than one occasion is grounds for termination.

1. Gender-based verbal abuse, profanity, or threats, including remarks, jokes, innuendoes or taunting which a reasonable woman would deem to be unwelcome ($1000)
2. Displaying pornographic or other offensive or derogatory material ($1000)
3. Unwelcome or inappropriate physical contact ($1000) (this category of behaviour is classified as assault under the Criminal Code of Canada and may concurrently be pursued criminally.)
4. Any other behaviour which a reasonable woman would deem to be unwelcome, harassing or discriminatory

Behaviour (code)	Description	Date	Associated penalty	Respondent's response
e.g. 2	Verbal profanity	March 21, 2008	$1000	Accepted responsibility and penalty
TOTAL PENALTY *			$1000	

* Consistent with this policy, the respondent may be permitted to fulfill payment of the penalty by means other than financial. For instance, the respondent may assist with workplace education workshops aimed at ending harassment and discrimination, or similar activities subject to approval by a majority of members of The Panel. If the respondent chooses to make financial restitution in fulfillment, this shall be facilitated through automatic payroll deduction. The restitution paid may be divided between the complainant and a human rights initiative at the request of the complainant.

APPENDIX C

COMMON LEGAL AVENUES FOR REPORTING WORKPLACE GENDER HARASSMENT IN UNIONIZED WORKPLACES IN BRITISH COLUMBIA[1]

	A	B	C
ROUTE	Workplace Harassment and Discrimination Policy	Collective Agreement (Union grievance)	Human Rights Complaint
CLAIM NORMALLY HEARD BY	Harassment and Discrimination Policy Panel	Union grievance and arbitration procedures in accordance with the BC Labour Relations Board enabled by the BC *Labour Relations Code* (1996)	BC Human Rights Tribunal enabled by the BC *Human Rights Code* (1996); support available through the Tribunal or BC Human Rights Coalition
AUTHORITY	Panel	Arbitration Board or Single Arbitrator	Tribunal

Possible Complications Related to Options (Expanded in Information Brochure in Appendix H)

A) The Harassment and Discrimination Advisor is often an employee of the workplace and may lack requisite experience; may be expensive if hiring legal counsel.

B) Union executives and representatives are drawn from employees who, especially in a male-dominated workplace, may be discriminatory towards female co-workers; the grievance is between the union and the employer, so the grievor may be "sidelined" during the grievance procedure; the union is required by law to represent the harasser if the harasser is a union member; resolutions may be based on collective as opposed to individual rights, so the grievor may find the resolution unsatisfactory.

[1] Federally-regulated workplaces in British Columbia and other Canadian provinces, which are designated by Section 2 of the *Canada Labour Code* (1985), are governed by the *Canada Labour Code* (1985) (and procedures of the Canadian Industrial Relations Board) and the *Canadian Human Rights Act* (1985) (and procedures of the Canadian Human Rights Commission) rather than the British Columbia *Labour Relations Code* (1996) and the British Columbia *Human Rights Code* (1996) as indicated above. This legislation is outlined briefly in this thesis, but is not analyzed, as the bulk of British Columbia workplaces, and those in which the participants in this research project were employed, are regulated by provincial legislation.

C) Process is complex, lengthy, and may be expensive; hearings are generally public; if the union route is available, claim may be held in abeyance until the outcome of a grievance arbitration is known, and *vice versa*.

All options: Women may not know whether assistance is available, or how or where to access assistance for their claims when it is available. Harassment on the basis of gender may be difficult to prove, especially in a legal sense.

The Workers' Compensation Board of British Columbia and federal Employment Insurance (Aggarwal & Gupta, 2006) may be accessed in certain instances with regard to workplace harassment. These options are not examined in the thesis, but are addressed in Chapters Four and Five and the information booklet. The British Columbia *Administrative Tribunals Act* (2004) has implications for the Labour Relations Board's arbitration process and the Human Rights Tribunal's complaint process, as it oversees tribunal functioning.

APPENDIX D

ANALYSIS OF THE BRITISH COLUMBIA LABOUR RELATIONS CODE (1996) AND BRITISH COLUMBIA LABOUR RELATIONS BOARD PROCEDURES

Labour Relations Board Website: http://www.lrb.bc.ca/

British Columbia *Labour Relations Code* (1996) web access: http://www.bclaws.ca/Recon/document/freeside/--%20l%20--/labour%20relations%20code%20%20rsbc%201996%20%20c.%20244/00_96244_01.xml (accessed June 2008)

Before beginning the critical analysis of the legislation, I wish to provide some context. I have not included all sections of the Labour Relations Code (1996) in this document, nor have I commented on all sections that have been included. Comments have been limited to the sections having the most relevance for women seeking redress for workplace harassment. It may appear, upon reading this analysis, that some of the observations I propose are hypersensitive, or even suspicious. This is because I am suspicious. The central concepts of feminist standpoint theory resonate with me. I have had experiences in my life where I have been a member of a disadvantaged group in relation to someone who was in a position of "power over" (Bishop, 2002) me. What has struck me as a result of my experiences of being "power-less" in relation to someone in authority, or with "power over" (Bishop, 2002), is that it is dehumanizing to have to grovel to get what should rightfully belong to all human beings, namely respect and social justice. I have observed others in similar situations and as a result of my personal encounters with oppression, I feel a great deal of empathy and connection with those who experience "power over" (Bishop, 2002).

I am suspicious of legal systems and processes that may not take the interests of women, people of colour or the economically disadvantaged into consideration, even if those systems and laws appear to be designed to assist those very groups of people. When a legal institution's redress procedures are not clearly delineated, those attempting to access justice in that institution are thrown into a position of being "power-less" in relation to those who know from experience what the procedures are and how to use them. Women who lack information about the procedures they could face if they decide to seek redress for workplace gender harassment are those I am attempting to assist with this research, and I would be remiss if I did not attempt to point out where they might encounter pitfalls. Therefore, in the course of analyzing the legislation, where procedures are vague or nonexistent with regard to how a legislative body reaches a decision or how a particular section of the law operates, perception has necessarily played a role in my attempt to understand and convey how the legislation and its associated processes might function at any given point.

Although consulting with those who work with these legislative options might be useful for gaining an understanding of the procedures, I have not pursued this option. This decision was influenced mostly by the fact that, owing to my experiences of being in situations where I felt power-less, I am likely to be mistrusting of the renditions of those in power with regard to how the procedures operate. This is not to suggest that those individuals would be deceitful. However, his or her explanation regarding the operation or efficacy of the procedures would be based on his or her own standpoint and experiences, which may bias his or her

opinion in that regard, just as my bias and life experience has shaped my perception of the legislation and associated processes. The same condition applies to those who have experienced the processes while attempting to resolve a complaint. Furthermore, in addition to my personal biases or perceptions, as well as those of the arbitrators, case-managers, lawyers, and research participants (all of which have been influenced by our own particular life experiences), there are possibly several other factors affecting the process. These factors could include, among others, written or unwritten workplace policies regarding how to proceed in particular circumstances, the facts of the case, and the decision-makers' personal and divergent philosophies on justice as it relates to race, class, and gender. The analysis of the British Columbia (BC) *Labour Relations Code* (1996) and Labour Relations Board procedures is undertaken below. Comments regarding the British Columbia (BC) *Human Rights Code* (1996) and BC Human Rights Tribunal are contained in Appendix G.

All information related to the BC Labour Relations Board (LRB) and *Labour Relations Code* (1996) (the "*Code*") was found online at http://www.lrb.bc.ca/ (accessed June 2008). For ease of distinction between the legislation and my comments, the legislation sections[1] are italicized. The preamble on the Labour Relations Board web page delineates the functions of the Board and *Code*. The *Code* is the piece of legislation supporting the operation of the Board, which is a tribunal where employees' grievances are heard. The preamble states that (from http://www.lrb.bc.ca/, accessed February 16, 2009):

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> The BC Labour Relations Board is an independent, administrative tribunal with the mandate to mediate and adjudicate employment and labour relations matters related to unionized workplaces.
>
> The Labour Relations Code (the "Code") governs all aspects of collective bargaining amongst the provincially-regulated employers and employees. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation[2] of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents.

The *Labour Relations Code* (1996) does not contain a definition of sexual or gender harassment, as it deals more generally with labour issues as outlined in Part 2 of the *Code*, as follows:

> ***Part 2 — Rights, Duties and Unfair Labour Practices***
>
> *4 Rights of employers and employees*
> *5 Prohibition against dismissals, etc., for exercising employee rights*
> *6 Unfair labour practices*
> *7 Limitation on activities of trade unions*
> *8 Right to communicate*
> *9 Coercion and intimidation prohibited*
> *10 Internal union affairs*
> *11 Requirement to bargain in good faith*
> *12 Duty of fair representation*
> *13 Procedure for fair representation complaint*
> *14 Inquiry into unfair labour practice*
> *15 Collective agreement may provide for union membership*
> *16 Assignment of fees and dues*
> *17 Religious objections*

Harassment Complaints and the Grievance Procedure / Arbitration

As mentioned previously, the *Labour Relations Code* (1996) and Board procedures are legislative options having significant application to women who are harassed in unionized workplaces. If a woman files a grievance in accordance with her workplace collective agreement, and that grievance goes to arbitration, the

[2] "Regulation" is enacted by authority of § 159 of the Code.

arbitration hearing will generally proceed in accordance with the procedures outlined in her union collective agreement. If the union and employer are unable to agree upon an arbitrator, an arbitrator will be appointed by the British Columbia Labour Relations Board's Collective Agreement Arbitration Bureau, which oversees labour arbitrations for provincially-regulated workplace. According to Labour Relations Board jurisprudence, a grievance can only be taken to arbitration by the union or the employer. As a result, the arbitrator is chosen by those two parties, with the employee having no right to provide input with regard to that choice. This is understandable in the sense that the union likely has a greater familiarity with the qualifications of arbitrators than does the grievor, but nonetheless leaves the grievor essentially voiceless with regard to the choice of arbitrator. The possible implications of this situation are obvious. The grievor is completely reliant upon her union to decide on a matter directly affecting her in a significant manner. Even if the union does represent the woman appropriately in its choice of arbitrator, which is not guaranteed, the union's authority to choose the arbitrator is yet another juncture in the process at which the complainant's freedom of choice and ability to act on her own behalf is limited by the legislation.

With regard to a situation of workplace gender harassment, the only type of "complaint" that could be filed (other than a complaint under Section 12, which will be discussed separately) with the Labour Relations Board in accordance with the *Labour Relations Code* (1996) is in the form of a request to proceed to mediation or arbitration to settle a difference. Mediation or arbitration, as specified in the BC *Labour Relations Code* (1996) and by Labour Relations Board procedures and

decisions, can only be initiated by a union or employer, not an employee, as established by the decision in the case of *Rayonier Canada Ltd. (BCLRB No. 40/75,* [1975] 2 Can LRBR 196*;* at http://www.lrb.bc.ca/bulletins/summary.htm, accessed March 19, 2009). In the Rayonier case, referenced in the Labour Relations Board's "Information Bulletin" entitled "Key Section 12 Decisions," it was determined that a claimant does not have the right to forward a grievance to arbitration:

> First, while arbitration is the ultimate mode of settlement of grievances, it is expensive, takes time and consumes the energy and attention of the parties. For that reason, it is preceded by a grievance procedure which is designed to clear up as many claims as possible without need for arbitration. The grievance, as it is taken through the various stages, is carefully considered by representatives of union and management at ascending levels of authority. Experience shows that this procedure resolves informally the vast majority of disputes arising under the agreement and in doing so plays a major role in securing the benefits of collective bargaining for the employees. But the institution can function successfully only if the union has the power to settle or drop those cases which it believes have little merit, even if the individual claimant disagrees. This permits the union to ration its own limited resources by arbitrating only those cases which have a reasonable prospect of success.... It is important as a matter of industrial relations policy that a union must be able to assume the responsibility of saying to an employee that his grievance has no merit and will be dropped. (p.12)

Thus, the only way a grievance can reach the stage of mediation or arbitration is by way of a grievor's union, although this isn't explicitly indicated in the *Code*. It is, however, as just mentioned, noted on the Information Bulletins entitled "Key Section 12 Decisions," and "Duty of Fair Representation and Internal Union Affairs," (see http://www.lrb.bc.ca/bulletins/duty.htm,[3] accessed March 2, 2009), in which it is stated that "[t]he decision as to whether to proceed to arbitration with a grievance is made by the union, not the grievor; . . .". Furthermore, the form entitled "Request for

[3] Although this Information Bulletin is still accessible at the link provided, it has recently been replaced on the Labour Relations Board's website by a much longer and detailed document entitled "Section 12 Guide."

Appointment," which is used to request the appointments noted below through the Collective Agreement Arbitration Bureau of the Labour Relations Board, must be signed by a person who is a representative of either the union or employer, or in one case (Section 105) a representative of both. The grievor is not authorized to sign the forms:

1) Section 86 – Appointment to constitute an Arbitration Board
2) Section 87 – Settlement Officer
3) Section 104 – Expedited Arbitrator (note: includes the option of a Settlement Officer)
4) Section 105 – Mediator / Arbitrator (note: Requests under Section 105 must be signed by both the employer and the union)

Part 7 — Mediation and Disputes Resolution

Division 1 — Mediation and Fact Finding

Part 7 of the *Code* relates only to collective bargaining disputes between the employer and union, not to other types of disputes, such as harassment, arising out of the collective agreement. Thus, it is not pertinent to the thesis, except that unions are in the position to bargain with their employers for better working conditions for women if they choose to do so. Many unionized workplaces, however, have two types of harassment policies and procedures, one under the authority of the employer and another outlined in the union's collective agreement and accessible in accordance with the grievance procedure.

Mediation officer and services

74 (1) The associate chair of the Mediation Division may appoint a mediation officer if

(a) notice has been given to commence collective bargaining between a trade union and an employer,

(b) *either party makes a written request to the associate chair to appoint a mediation officer to confer with the parties to assist them to conclude a collective agreement or a renewal or revision of it, and*

(c) *the request is accompanied by a statement of the matters the parties have or have not agreed on in the course of collective bargaining.*

(2) *A person appointed as a mediation officer need not be an employee of the board.*

(3) *The minister may at any time during the course of collective bargaining between an employer and a trade union, if he or she considers that the appointment is likely to facilitate the making of a collective agreement, appoint a mediation officer to confer with the parties.*

(4) *If a mediation officer is appointed to confer with the parties, the mediation officer must, no later than 10 days after first meeting with the parties or 20 days after the mediation officer's appointment, whichever is sooner, or such longer period as the parties agree on or as the minister directs, report to the associate chair setting out the matters on which the parties have or have not agreed and such other information as the mediation officer considers relevant to the collective bargaining between the parties.*

(5) *If either party so requests of the associate chair, or if the minister so directs, the mediation officer must provide to the associate chair and the parties a report concerning the collective bargaining dispute, and the report may include recommended terms of settlement.*

(6) *Parties conferring with a mediation officer under this section must provide the information that the mediation officer requests concerning their collective bargaining.*

Notice of strike or lockout

75 (1) *If a strike or lockout has commenced, the trade union or employer commencing the strike or lockout must immediately inform the chair in writing specifying the date the strike or lockout commenced.*

(2) *The chair must inform the minister of strikes and lockouts that occur or are threatened.*

Special mediator

76 (1) The minister may appoint a special mediator, and specify terms of reference for the special mediator, to assist the parties in settling the terms and conditions of a collective agreement or a renewal or revision of a collective agreement.

(2) The minister may terminate the appointment of a special mediator.

(3) The special mediator must keep the minister informed as to the progress of the mediation.

(4) The special mediator, in carrying out his or her duties under this Code, has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

Fact finding

77 (1) The associate chair may appoint a fact finder in respect of a collective bargaining dispute, and the associate chair must give written notice of the appointment to each of the parties to the dispute.

(2) Within 7 days after receiving the notice of the appointment of the fact finder, each party must give written notice to the fact finder and the other party setting out all matters the parties have agreed on for inclusion in a collective agreement and all matters remaining in dispute between the parties.

(3) If a party fails to comply with subsection (2), the fact finder may make a determination of the matters mentioned in subsection (2).

(4) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report to the associate chair setting out the matters agreed on by the parties for inclusion in a collective agreement and the matters remaining in dispute between the parties.

(5) The fact finder may include in his or her report his or her findings in respect of any matter that he or she considers relevant to the making of a collective agreement between the parties.

(6) The associate chair must provide a copy of the fact finder's report to the parties, and may make it public if the associate chair considers it advisable to do so.

Last offer votes

78 (1) Before the commencement of a strike or lockout, the employer of the employees in the affected bargaining unit may request that a vote of those employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, and if the employer requests that a vote be taken, the associate chair must direct that a vote of those employees to accept or reject the offer be held in a manner the associate chair directs.

(2) Before the commencement of a strike or lockout, the trade union that is certified as the bargaining agent of the employees in the affected bargaining unit may, if more than one employer is represented in the dispute by an employers' organization, request that a vote of those employers be taken as to the acceptance or rejection of the offer of the trade union last received by the employers' organization in respect of all matters remaining in dispute between the parties, and if the trade union requests that a vote be taken, the associate chair must direct that a vote of those employers to accept or reject the offer be held in a manner the associate chair directs.

(3) If a vote under this section favours the acceptance of a final offer, an agreement is thereby constituted between the parties.

(4) The holding of a vote or a request for the taking of a vote under subsection (1) or (2) does not extend any time limits or periods referred to in section 60 or 61.

(5) Only one vote in respect of the same dispute may be held under subsection (1) and only one vote in respect of the same dispute may be held under subsection (2).

(6) If, during a strike or lockout, the minister considers that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the minister may direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith in a manner the minister directs.

(7) If, during a strike or lockout, more than one employer is represented in the dispute by an employers' organization and the minister considers that it is in the public interest that the employers comprising the employers' organization be given the opportunity to accept or reject the

offer of the bargaining agent for the employees last received by the employers' organization in respect of all matters remaining in dispute between the parties, the minister may direct that a vote of those employers to accept or reject the offer be held forthwith in a manner the minister directs.

Division 2 — Commissions and Councils

Industrial inquiry commission

79 (1) *The minister may, on application or on his or her own motion, make or cause to be made inquiries considered advisable respecting labour relations matters, and subject to this Code and regulations, may do the things he or she considers necessary to maintain or secure labour relations stability and promote conditions favourable to settlement of disputes.*

(2) *For any of the purposes of subsection (1), or if in an industry a dispute between employers and employees exists or is likely to arise, the minister may refer the matter to an industrial inquiry commission for investigation and report.*

(3) *An industrial inquiry commission consists of one or more members appointed by the minister.*

(4) *The minister must furnish the industrial inquiry commission with a statement of the matters to be inquired into, and if an inquiry involves particular persons or parties, must advise them of the appointment of the industrial inquiry commission.*

(5) *An industrial inquiry commission must inquire into the matters referred to it by the minister and endeavour to carry out its terms of reference, and if a settlement is not effected in the meantime, must report the result of its inquiries and its recommendations to the minister within 14 days after its appointment or within a further time the minister specifies.*

(6) *On receipt of a report of an industrial inquiry commission relating to a dispute between employers and employees, the minister must furnish a copy to each of the parties affected and must publish it in the manner considered advisable.*

(7) *The members of an industrial inquiry commission have the power and authority of a commissioner under sections 12, 15 and 16 of the Inquiry Act.*

(8) If either before or after the report is made the parties agree in writing to accept the report in respect of the matters referred to the industrial inquiry commission, the parties are bound by the report in respect of those matters.

Industry advisory councils

80 The minister may, on application or on his or her own motion, establish industry advisory councils considered appropriate to examine labour management relations in those industries and recommend to the minister and other interested persons or groups measures that may contribute to the improvement of those relations, including measures to achieve more effective collective bargaining and procedures for settling disputes.

Part 8 — Arbitration Procedures

Division 1 — Definitions and Purpose

As has already been mentioned, a grievor has no legal right to proceed with a grievance (and possible subsequent arbitration), as the *Labour Relations Code* (1996) and Board procedures establish that this authority lies with the woman's employer and union. Thus, a grievor may assume that her union representative, charged with exclusive entitlement in this regard, possesses the expertise necessary to handle her grievance. For this reason or others, she may not even consider examining grievance and arbitration processes in her collective agreement or the *Labour Relations Code* (1996). She would thus not realize that the procedures are often vague and that it is unclear at which points, if any, she might be able to provide input to her union with regard to how she would like the matter to proceed and be resolved. In accordance with the legislation outlined in the *Labour Relations Code* (1996), she is essentially a non-party to her own case in terms of decision-making power, unless her union so chooses to consult her behind closed doors. Furthermore, the information provided in relation to arbitration procedures, owing to

its general inaccessibility to laypersons,[4] does little to enlighten someone on what she might be facing if her grievance proceeds to arbitration. A woman filing a grievance may not necessarily be competent to provide input regarding how a grievance or arbitration should proceed. If she were, however, the lack of accessible information couple with the fact that she is not a party to her own grievance seriously limit a potential complainant's personal power and impact her ability to make an informed decision regarding whether or not she would be wiling to consider proceeding to arbitration as a possible resolution to a harassment grievance.

In addition, since union officials are generally volunteers, it may be the case that they do not have the expertise required to deal with grievance matters competently, despite the fact that the grievor may understandably expect that they do. Unions may hire business agents, seek legal advice, or be provided with

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[4] The *Labour Relations Code* website (http://www.lrb.bc.ca/) contains a number of documents ancillary to the *Code* ("Code Guide", "Information Bulletins," "Mediation Services," "Practice Guidelines," "Rules," and "Schedules"), which were likely created to clarify the Code and its processes, but there are a number of concerns with these "support" documents. First, the documents are poorly organized, which renders them much less useful than they likely could be. For instance, the "Code Guide" contains a section entitled "Chapter 9 - Arbitration Procedures" the title of which, in itself, is confusing, as the Code Guide parallels the Code, but arbitration procedures in the *Code* are contained in "Part 8." The information documents also revolve to a large degree around collective bargaining, and are, of course, directed at unions and employers, rather than individual grievors. The disorderliness of the support documentation contained on the Labour Relations Board website would most certainly be confusing for a layperson seeking information. Furthermore, the sheer volume of support documents is overwhelming. Expecting that someone experiencing the turmoil associated with workplace harassment would be in a position to sort through these documents to find information is unrealistic. The document regarding Duty of Fair Representation, contained in the "Practice Guidelines," is somewhat useful. In describing the implications of the duty of fair representation, this guideline outlines some of the aspects of arbitration proceedings. However, the guideline would be more useful if it was situated elsewhere or titled differently, as none of the documents in the Practice Guidelines, or elsewhere on the Board's website, are obviously related to arbitration procedures by their titles. On a positive note, the Board has listed on its web site contact information for an "Information Officer" whose role is to assist individuals with questions regarding "general information about the Board's procedures" (http://www.lrb.bc.ca/contactus/) and "the duty of fair representation, or other sections of the Code which may deal with union members and their union" (http://www.lrb.bc.ca/guidelines/representation.htm). I consulted the Information Officer several times for clarification and received prompt and thorough responses.

assistance from an agent with a regional, national, or international division of their union. However, at least in my experience, it still generally remains the exclusive right of the local union grievance committee or executive to determine whether or not to forward a grievance to arbitration in the first place, which they may do with or without the input of external resource persons. Obviously, the union representative's potential lack of expertise may have a palpable effect on a woman seeking, or considering seeking, resolution for harassment. If she is uncertain about what to expect in the union grievance and arbitration process, or her union's ability to deal with the matter, she may be afraid to file a harassment claim. Section 12 of the *Labour Relations Code* (1996), which is the section addressing the union's right to provide its members with fair representation, is the safeguard provided in the *Code* for those contending they did not receive adequate representation from their unions. Section 12 is considered to fall under the auspices of Section 14 ("Inquiry into unfair labour Practice") of the *Labour Relations Code* (1996), and states as follows:

Duty of fair representation

12 (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith

(a) in representing any of the employees in an appropriate bargaining unit, or

(b) in the referral of persons to employment

whether or not the employees or persons are members of the trade union or a constituent union of the council of trade unions.

Although Section 82 (2) of the Code states that an arbitration board "must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement," according

to Section 12, the duty to provide fair representation (or "DFR") is considered by the Labour Relations Board to be breached only if the complainant can establish that the union acted in a manner that was "arbitrary, discriminatory or in bad faith." Mere incompetence is not something that can be legally challenged successfully by the grievor[5]. Proving that a union acted in a manner that was "arbitrary, discriminatory, or in bad faith" could be difficult, a position which is borne out in an analysis of several DFR claims from 2000 to 2008 and the work of Fiona McQuarrie (u.d.). Consequently, despite Section 12, a union's potential lack of expertise, which may have a tremendous impact on whether a woman's grievance is handled by the union, whether it goes to arbitration, and what result is obtained, is not really, at least legally, an issue for a union. The form to be completed to file a complaint under Section 12 of the Labour Relations Code is available on the Labour Relations website at http://www.lrb.bc.ca/forms/. As of March 22, 2009, the cost to file the form was $100.00. If a woman who was being harassed chose to file a complaint with regard to Section 12, it would be dealt with by way of sections 13 and 14(a), (b), and (d), as follows:

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[5] See, for instance, British Columbia Labour Relations Board decision BCLRB No. B405/2003 (Vinka Sekulic and Georgia Place Limited) with regard to the duty of fair representation. An interesting segment of that decision reads: "The thrust of the complaint is twofold. First, Sekulic disagrees with the Union's assessment about the merits of the grievance. The answer to this aspect of the claim is that it is not the Board's task under Section 12 to second-guess the Union's assessment about the merits of a grievance." The practice guidelines regarding duty of fair representation state that, so long as a union "can establish that it investigated the grievance and in the circumstances came to a thoughtful, reasoned decision as to its disposition," the "union need not be correct in its assessment" of a grievance (http://www.lrb.bc.ca/guidelines/representation.htm). Essentially then, if the union can demonstrate that it, at least for the sake of appearance, met the requirements of the duty of fair representation, the merits of the case are irrelevant with regard to the union's decision about whether or not to forward a grievance to arbitration. This could certainly have an impact on the ability of a woman to obtain redress for harassment occurring in a workplace in which the union representation was disinclined to assist women.

Procedure for fair representation complaint

13 (1) If a written complaint is made to the board that a trade union, council of trade unions or employers' organization has contravened section 12, the following procedure must be followed:

(a) a panel of the board must determine whether or not it considers that the complaint discloses a case that the contravention has apparently occurred;

(b) if the panel considers that the complaint discloses sufficient evidence that the contravention has apparently occurred, it must

(i) serve a notice of the complaint on the trade union, council of trade unions or employers' organization against which the complaint is made and invite a reply to the complaint from the trade union, council of trade unions or employers' organization, and

(ii) dismiss the complaint or refer it to the board for a hearing.

(2) If the board is satisfied that the trade union, council of trade unions or employers' organization contravened section 12, the board may make an order or direction referred to in section 14 (4) (a), (b) or (d).

Inquiry into unfair labour practice

14 (1) If a written complaint is made to the board that any person is committing an act prohibited by section 5, 6, 7, 9, 10, 11 or 12, the board must serve a notice of the complaint on the person against whom it is made and on any other person affected by it.

Section 12 complaints are addressed according to Section 14.

(2) The board may appoint an officer to inquire into the complaint and attempt to settle the matter complained of, and the officer must report the results of his or her inquiry and endeavours to the board.

(3) If an appointment is not made under subsection (2), or the officer is unable to settle the matter, the board may inquire into the complaint.

(4) If, on inquiry, the board is satisfied that any person is doing, or has done, an act prohibited by section 5, 6, 7, 9, 10, 11 or 12, it may

(a) make an order directing the person to cease doing the act,

(b) in the same or a subsequent order, direct any person to rectify the act,

(c) in the case of an employer, include a direction to reinstate and pay an employee a sum equal to wages lost due to his or her discharge, suspension, transfer, layoff or other disciplinary action contrary to section 6 (3) (a) or (b),

(d) in the case of a trade union, include a direction to reinstate a person to membership in the trade union and pay to that person

(i) a sum equal to wages lost due to his or her expulsion or suspension contrary to section 10, and

(ii) the amount of any penalty, levy, fee, dues or assessment imposed on him or her contrary to section 10,

Definitions

81 In this Part:

"arbitration board" includes

(a) a single arbitrator, or

(b) another tribunal or body appointed or constituted under this Part or a collective agreement;

This section provides that an arbitration board can be constituted either by the Labour Relations Board, which happens only in certain circumstances, or by the methods outlined in a collective agreement, which is the more common route. The choice of arbitrator, providing they can agree on one (and if not, one may be appointed by the BC Labour Relations Board in accordance with Section 86 of the BC *Labour Relations Code*, 1996), rests solely between the employer and union. A business agent employed by a CUPE Local in Ontario, where I was employed, commented to me (B. Hinton, personal communication, 2000) that arbitrators wouldn't remain in business long if their decisions weren't balanced between employers and unions, owing to the fact that the union and employer, potential adversaries in the grievance resolution process, must agree on the choice of

arbitrator. This contention is supported by the number one criterion for initial appointment of an arbitrator to the BC Labour Relations Board's Collective Agreement Arbitration Bureau Register of Arbitrators (at http://www.lrb.bc.ca/caab/arbreg.htm, accessed March 16, 2009):

> The JAC [joint advisory committee] will apply the following criteria when advising the Director as to the suitability of candidates for initial placement on the register of arbitrators:
>
> 1. Mutual Acceptability
>
> The primary criterion for all those who are placed on the Register of Arbitrators is that they be accepted as impartial and neutral by employers and trade unions. Such acceptability will normally be evidenced by the applicant having received a reasonable number of consensual rights appointments.

As a result of the requirement that an arbitrator be mutually acceptable to both union and employer, the condition that will guarantee him or her continued employability, a particular grievance being pursued to arbitration may not necessarily be decided in favour of the union (and by extension the grievor) regardless of whether it has legal merit.

> *"arbitration bureau" means the Collective Agreement Arbitration Bureau continued under this Part;*
>
> *"director" means the director of the arbitration bureau;*
>
> *"issue" means, in respect of an award, to make and publish the award to the parties to the arbitration;*
>
> *"settlement officer" means an employee appointed under the Public Service Act who is appointed as a settlement officer by the director.*

Purpose of Part

82 (1) It is the purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.

(2) *An arbitration board, to further the purpose expressed in subsection (1), must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and must apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.*

This section provides that an arbitration board "must have regard to the real substance of the matters in dispute" and must apply principles consistent with the policy of the *Code*. However, this section does not indicate how a grievance will be dealt with, nor does it provide much assurance that a matter will be dealt with in an appropriate manner. With regard to Section 12 complaints, the Board does not normally consider the merits of the grievance, but rather how the union handled it, as evidenced in the Labour Relations Board bulletin entitled "Duty of Fair Representation and Internal Union Affairs" (at http://www.lrb.bc.ca/bulletins/duty.htm, accessed March 22, 2009):

> If a Section 12 complaint involves a grievance, the Board will generally not rule on the merits of the grievance, but will only rule on whether the union has failed in its responsibilities under the Code.

Division 2 — Collective Agreement Arbitration Bureau

Collective Agreement Arbitration Bureau

83 (1) *The Collective Agreement Arbitration Bureau is continued consisting of a director designated by the chair and other employees of the board designated by the director.*

(2) *The director must establish and maintain a register of arbitrators.*

(3) *The minister must appoint a joint advisory committee consisting of*

(a) *2 persons representative of trade unions,*

(b) *2 persons representative of employers,*

(c) *2 persons representative of arbitrators, and*

(d) the director, who is the chair of the committee.

4) The joint advisory committee must advise the director on

(a) the training and education of labour arbitrators and settlement officers,

(b) research and publication of information concerning labour arbitrations, and

(c) the establishment and maintenance of a register of arbitrators.

The Collective Agreement Arbitration Bureau is the group of representatives charged by the BC *Labour Relations Code* (1996) with the authority to oversee arbitration hearings. This is also the body to which arbitration boards constituted in accordance with a collective agreement must file their decisions (see Section 96). According to this part, the criteria by which a "representative" is chosen, which is not explicated, is an important consideration. The "persons representative of trade unions" may be representative of unions but not necessarily of the union membership when taking issues such as race, class, and gender into account, a situation that may have an impact on the outcome of arbitration matters. Several scholars have written about sexism in unions (see for instance, White, 1993; Creese, 1999; and Cockburn, 1991), so it should not be expected that union representatives will automatically champion women when it comes to workplace gender discrimination and harassment. The case of Ms. Jeanette Moznik (*Moznik v. Richmond (City of) et al., 2006*) is a prime example of a union acting in a discriminatory manner toward women seeking their assistance. With regard to the legal decision in Ms. Moznik's case, Bohuslawsky and Chapman (2006, ¶ 2) report that Ms. Moznik contended that "the employer and the union did not take her

complaints seriously, and that the union 'actively discouraged and attempted to thwart investigations by the RCMP in the past into allegations involving misconduct by its members'" (Justice Joyce, *Moznik v. Richmond (City of) et al.*, 2006; as cited in Bohuslawsky and Chapman 2006, ¶ 2). This potential for sexist bias in unions, if held by the union representatives on the Collective Agreement Arbitration Bureau's Joint Advisory Committee, could certainly influence the approach taken in relation to "training and education" and "research and publication of information" of arbitrators as outlined in Section 83(4). This, in turn, could impact arbitration results for female grievors who are bound by the decisions of those same arbitrators.

Division 3 — Collective Agreement Provisions

All sections in Division 3, unless it is noted that the Minister or other agent has the authority to amend, are the jurisdiction of the union and the employer. As previously noted, the union and employer have authority over grievances, which obviously impacts the capacity of a woman filing a complaint of harassment to make decisions regarding a matter that affects her profoundly. A woman grieving an alleged situation of harassment is represented by her union, and her concerns or wishes may or may not be heeded or addressed by her union, at the union's discretion, in the course of providing her with representation as required under the Labour Relations Code (1996). This tenet is emphasized in the case of Zarina Sajoo and British Columbia Nurses' Union (2002; p. 3), where it is dictated in the decision that "there is no requirement that it [the union] agree with the position of the grievor." This case outlines the extent of a union's responsibility to assist a grievor; it requires only that the union act in good faith, not that it be competent to provide assistance to

the grievor, as demonstrated by the following excerpt from the panel's decision (emphasis added):

> A union discharges its statutory obligation where it is aware of the circumstances surrounding a grievance, considers the merits of the case, and comes to a reasoned decision regarding whether to proceed to arbitration. *The union need not be correct in its assessment, and there is no requirement that it agree with the position of the grievor.* Furthermore, a grievor has no absolute right to pursue a grievance to arbitration: Donato Franco, BCLRB No. B90/94 (Reconsideration of IRC No. C244/92), (1994) 22 CLRBR (2d) 281.

Unions executives or representatives hostile to women invading their workplaces or simply indifferent to women's claims of harassment would likely find it relatively easy to fail to provide an iota of assistance yet demonstrate that they had acted in good faith.

With such an overwhelming number of complaints being rejected, one cannot help but wonder why. As stated by McQuarrie (u.d.) in a paper regarding the Duty of Fair Representation in British Columbia, perhaps those filing Section 12 complaints are unaware of the scope of the union's obligations, are filing a complaint to punish the union's representatives, or they do not clearly articulate in what manner they allege the union to have acted in a manner that is arbitrary, discriminatory or in bad faith, thereby tying the hands of the Board to render a decision in their favour. This is certainly possible. On the other hand, perhaps the provincial government is complicit in ensuring unions (and subsequently employers) remain "in control" of their employees and workplaces. It is likely that the entities the government looks to satisfy in order to prevent labour unrest are employers and unions, rather than individual union members. Ruling in favour of the union (the collective) prevents employees (the individual) from undermining the control that unions have in the

workplace and ensures that employers are dealing with a single entity, rather than, in some cases, hundreds or even thousands of individual employees. In this way, the (albeit somewhat obscured) support of the Labour Relations Board, having set the requirements for establishing a Section 12 complaint as nearly unattainable, assists both employers and unions, and by extension, the government in terms of managing employees. If the government makes it nearly impossible for an employee to "win" a Section 12 complaint, it guarantees that the authority of the union is not open to challenge by its members. Establishing the union as paramount to individual employees permits the union to become a tool of the employer in the sense that the union bears, at least to some degree, the responsibility for managing the employer's employees. Unfortunately, this arrangement, if it exists, leaves the individual union member out in the cold.

In any event, union members are unlikely to achieve positive results by filing complaints with the Labour Relations Board with regard to the representation they received from their union. Unfortunately, some union representatives appear to be well aware of the fact that the Labour Relations Board nearly always rules in their favour on Section 12 complaints. The alleged facts in the case of Jon Hummel and Terry Kachanoski (2008; p. 3) are that a union president, when confronted with two employees' warning that they would file a claim of duty of fair representation, allegedly responded "fill your boots," as "the Board always rules in our favour in these matters." Having worked for a union myself, I can attest that this is the belief of union representatives and executives, and that they have valid reasons for holding this belief.

For women who encounter union representatives who are less than willing to assist them, Section 12 is one defence (another being the option of filing a complaint in accordance with Section 14 of the BC *Human Rights Code*, 1996) they have against union incompetence or outright discrimination. Unfortunately, the statistics demonstrate that these women are unlikely to obtain justice by filing a Section 12 complaint, if that option is even open to them by virtue of having completed the grievance process. Thus, the grievor is in the hands of her union when attempting to put forward a claim of harassment in accordance with a collective agreement, and if the union is unsupportive, it is unlikely the grievor will achieve satisfaction with the process, and the grievance may not even move forward.

Dismissal or arbitration provision

84 (1) Every collective agreement must contain a provision governing dismissal or discipline of an employee bound by the agreement, and that or another provision must require that the employer have a just and reasonable cause for dismissal or discipline of an employee, but this section does not prohibit the parties to a collective agreement from including in it a different provision for employment of certain employees on a probationary basis.

This section requires that every collective agreement must contain a provision preventing employees from being disciplined or dismissed without reasonable cause. In effect, the section establishes the situation whereby a union is legally obligated to represent not only a woman filing a harassment grievance, but her alleged harasser if he is a member of a union and in jeopardy of being disciplined or dismissed by the employer. Often, both the woman being harassed and the perpetrator of the harassment are members of the same union. Aggarwal and Gupta emphasize that, in these cases, this is "not a very happy situation for the union," and

that as a result, unions often attempt to address these situations "within 'the four walls' of the union" (2006, p. 144). One could imagine the tendency to proceed in this manner being perceived by those considering filing a harassment claim as somewhat of a "star chamber" or "kangaroo court," possibly resulting in decreased willingness of those being harassed to file complaints. Although it might seem reasonable to respond to this contention with the suggestion that women considering filing complaints would be unaware that unions might deal with these situations behind closed doors, Participant 2 in this research study seemed to be well aware of this possibility, and explained why she was reluctant to even approach her union regarding the harassment she was experiencing:

> It's not so – I wasn't so much worried about the confidentiality, but just that, you know, they [the union] have to be fair to both parties understandably, so then they would bring that second, that other person in. And I don't think I'd have a choice as to how that proceeded at that point. Right? And that second person could tell anybody they wanted to, and he's proven himself to do that.

Perhaps in accordance with a concern expressed earlier, this participant's fear of approaching her union could have been compounded by the fact that her union's grievance procedures, like those of most other unions, are lacking in detail. Although most collective agreements contain information about who deals with a grievance at different steps, a collective agreement does not generally give a potential grievor any inclination of how her union will handle her situation once she discloses her concerns to the union, or other particulars of this nature. These finer points are not outlined in collective agreements or elsewhere, such as the Labour Relations Board website or the *Labour Relations Code* (1996), which could have led this participant to reach her own conclusions about how the union grievance process

might unfold. Regardless of whether her decision was influenced by unclear procedures or her concern that the union would not provide her with proper representation in the face of also being required to provide representation to her harasser, the participant chose not to bring her concern to her union:

> I have looked at what the union, um, considers harassment and what, uh, what, um, their procedure is, and what's always scared me . . .I think with the, with the union representation what worries me about it is that, um, once it gets started, it's going to be a freight train that I have no control over. And the union, I mean, and it's a good thing, they support all of their members and so the people that I'm feeling harassed by are also union members so I'm not really convinced that the union will do a good job looking at me and supporting me, that, that, um, I mean, their job is to support everybody who works for the union so, um . . . yeah.

The problem here is that, in addition to a union's obligation to represent union members who might have been unjustly disciplined or dismissed, unions are also required to ensure that the workplace is safe and free of harassment (Aggarwal & Gupta, 2006). Thus, as Aggarwal and Gupta (2006) suggest, the legal obligations to represent an alleged harasser and to ensure a harassment-free workplace, which to some degree are oppositional to one another, present a "no-win situation" for the union (p. 145):

> How would the membership (particularly women) react, if for example, the union wins the case for the alleged harasser, including reinstatement? Victims of sexual harassment as well as other female employees in the workplace are liable to view the reinstatement of the harasser as a slap on the wrist of the offender. It causes serious embarrassment to the union.

As a result of a union's attempt to balance these competing legal obligations, women seeking to file harassment grievances with those same unions may also find themselves in a "no-win" situation.

(2) *Every collective agreement must contain a provision for final and conclusive settlement without stoppage of work, by arbitration or another method agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable.*

This section establishes that a collective agreement must contain a provision for settling disputes between "persons bound by the agreement." In accordance with Section 48, "parties bound by collective agreement" in a workplace include the trade union, the employer, and the employees. However, as outlined in jurisprudence associated with Section 12 complaints, accessible on the Labour Relations Board website, individual employees are not legally entitled by the *Labour Relations Code* (1996) to determine, or even suggest, the manner or mechanism by which their disputes will be settled. The one exception, and a way women may be able to offer their opinions or recommendations regarding dispute settlement, is through the collective bargaining process. However, this process may not offer much to women working in male-dominated unionized workplaces if sexism is present. If female union members have a desire to address gender harassment or sexism in the workplace, but their union representatives support the women's sexist co-workers, or are sexist themselves, the women's bargaining proposals are likely to fall on deaf ears.

(3) *If a collective agreement does not contain a provision referred to in subsections (1) and (2), the collective agreement is deemed to contain those of the following provisions it does not contain:*

(a) *the employer must not dismiss or discipline an employee bound by this agreement except for just and reasonable cause;*

(b) *if a difference arises between the parties relating to the dismissal or discipline of an employee, or to the interpretation, application, operation or alleged violation of this agreement, including a question as to whether a matter is arbitrable, either of the parties, without stoppage of work, may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference to arbitration, and the parties must agree on a single arbitrator, the arbitrator must hear and determine the difference and issue a decision, which is final and binding on the parties and any person affected by it.*

Section 84 (3) provides a "default" and binding dispute settlement mechanism in the event a collective agreement does not contain the elements outlined in subsections (a) (dismissal or discipline may be only for just cause) and (b) (either party may submit a question to arbitration that cannot be resolved by existing grievance procedures, which will be heard only by a single arbitrator).

Unworkable provision

85 (1) *If in the minister's opinion a part of the arbitration provision in a collective agreement, including the method of appointing the arbitration board, is inadequate, or the provision set out in section 84 (3) (b) is alleged by either party to be unsuitable, the minister may at the request of either party modify the provision so long as it conforms with section 84 (1) and (2).*

According to Section 85 (1), the Minister of Labour and Citizens' Services has final authority over the arbitration provision in a collective agreement, which may or may not work to the advantage of women pursuing harassment claims. A Minister's likelihood of interjecting is unknown.

(2) *Until modified under subsection (1), the arbitration provision in the collective agreement, or in section 84 (3) (b), as the case may be, applies.*

Failure to appoint arbitration board

86 (1) *Despite section 85, if there is a failure to appoint or constitute an arbitration board under a collective agreement or under section 84 (3),*

the director, at the request of either party, must make the appointments necessary to constitute an arbitration board, and a person so appointed by the director is deemed to be appointed in accordance with the collective agreement, or under section 84 (3), as the case may be.

(2) Nothing in a collective agreement is to be construed as requiring the director to constitute an arbitration board consisting of more than a single arbitrator.

Section 86 provides that the Labour Relations Board's Collective Agreement Arbitration Bureau may appoint an arbitration board at the request of either party (see comments with regard to the definition of "party" under Section 87) upon failure to constitute an arbitration board. The appointed board may consist of a single arbitrator. In relation to the remarks made regarding Section 81, and the fact that arbitrators must be selected with the consent of both the employer and union, it is obviously in the interests of the union and employer to agree upon an arbitrator, or either party may end up with one they would prefer not to have.

Settlement officer

87 (1) Either party to the collective agreement, within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration, may request the director in writing to appoint a settlement officer to confer with the parties to assist them to settle the difference, if the request is accompanied by a statement of the difference to be settled.

The words "either party," as contained in this section and other sections of the *Labour Relations Code* (1996), create confusion based on definitions and implications of other sections in the *Code* (1996). In Section 1 of the *Labour Relations Code* (1996; emphasis added), it is declared that a "'party' means a *person* bound by a collective agreement or involved in a dispute," and a "person" is defined as including "an employee." It is noted in Section 48 (a) of the *Labour Relations Code* (1996; emphasis

added), entitled "*Parties* bound by collective agreement" that "a collective agreement is binding on . . . every *employee* of an employer who has entered into it." It would appear, then, from these two sections that the term "party" could be taken to include an employee, leading one to conclude that any employee could initiate requests in accordance with the terminology used in Section 87(1) and others (for instance, sections 86, 104, and 105) of the *Labour Relations Code* (1996). However, this is not the case.

Getting back to the terminology of "either party" used in this section, the word "either" generally refers to a situation including no more than two options or entities. In addition, for purposes of Section 87(1), it becomes clear upon examining the form to be completed in order to request appointment of a settlement officer (at http://www.lrb.bc.ca/forms/, accessed March 21, 2009) that "either party to the collective agreement" clearly refers to only *two* parties, the employer and the union, as the form must be signed by either the union or the employer, not an employee. Seeking absolute clarity on this point, I consulted the Board's Information Officer, who confirmed that only "a party to a collective agreement," in his words, the union or employer, is permitted to request an appointment with regard to Section 87 (G. Pocklington, personal communication, March 24, 2009). Since a distinct definition of the term "party" is included in Section 1 of the *Labour Relations Code* (1996), the use of the term in different contexts throughout the *Code* (1996), particularly when it appears to impart the right of employees to make requests for appointments that would initiate proceedings, is misleading. The lack of clarity created by the imprecise usage of terminology in the *Code* (1996) complicates matters for women seeking

information regarding the options available to them for pursuing complaints of workplace gender harassment. In addition, assisting the parties to reach a settlement may involve coercion or force being placed upon one party or another. In any event, the role of the settlement officer is illuminated in Section 87 (2):

> (2) *If a settlement officer is appointed under subsection (1), the settlement officer must, within 5 days of the appointment or within such further time as the director may allow,*
>
> *(a) inquire into the difference,*
>
> *(b) endeavour to assist the parties in settling the difference, and*
>
> *(c) report to the director on the results of the inquiry and the success of the settlement effort.*
>
> (3) *When the director receives a report under subsection (2) and the parties have not settled the difference, the director may refer the difference back to the parties.*

It appears that the role of the settlement officer as outlined in 87(b) is similar to that of a mediator-arbitrator in Section 105(6) of the *Code* (1996), both of which "endeavour to assist the parties" to settle their differences. For women filing harassment claims, whether these provisions might lead to better redress results than proceeding to arbitration is unknown, and is likely dependent on a number of factors, including the approaches of the settlement officer and arbitrator or arbitration board. "Encouraging" the parties to settle differences could potentially lead to coercion, which is concerning, and will be discussed shortly.

Action by Labour Relations Board

> 88 *If a difference arises during the term of a collective agreement, and in the board's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties, the board may, on application by either party to the difference, or on its own motion,*

> *(a) inquire into the difference and make recommendations for settlement, and*
>
> *(b) if the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement or, whether or not the difference is arbitrable, request the minister to appoint a special officer.*

My experience working for a union, as well as media accounts, leads me to believe that employers and unions sometimes delay dealing with situations in workplaces, possibly owing to uncertainty about how to address them. Whatever the reason for it, the Fire Rescue Services of Richmond, British Columbia was a case in which gender harassment in the workplace remained unaddressed for years by both the union and the employer (*Moznik v. Richmond [City of] et al.*, 2006 BCSC 1848; Paish, 2006). A simple internet search will provide the reader with a multitude of information regarding that case, which has involved claims being filed in several arenas by a number of women. The claims that were eventually filed in relation to Richmond Fire Rescue Services related to a situation of harassment in the workplace that had been ongoing for years. It is interesting to consider whether delays in settling differences arising from poisoned working environments, for instance, could be considered situations constituting "industrial unrest" if a multitude of employees were affected or protested having to work under such conditions. I suppose this would depend upon the Board's opinion about whether a sufficient delay had occurred or if the matter is considered to be a source of industrial unrest.

Authority of arbitration board

Section 89 indicates that an arbitration board has final and sole authority to settle disputes arising under collective agreements. However, the decision may be

appealed in accordance with Sections 99 and 100, but the "Information Bulletin" entitled "Review of Arbitration Awards," accessible on the Board's website at http://www.lrb.bc.ca/bulletins/review.htm establishes that the avenues of appeal are limited, as follows:

> The Board is not a full-fledged avenue for appeal of arbitration awards. Appeal as a matter of course would be destructive to the arbitration system, which is intended to be a relatively quick, inexpensive and informal method of resolving contested grievances. The grounds for review under Section 99 (1) are:
>
> - a party has been denied a fair hearing, or
> - the award is inconsistent with the principles of the Labour Relations Code or another Act dealing with labour relations.

The alleged denial of a fair hearing is one situation that would permit a woman to appeal a decision of an arbitration board.

The subsections of Section 89 refer to decisions that may be taken by an arbitration board (which, in accordance with the dispute resolution processes outlined in a collective agreement or by Section 86(2) of the *Code* (1996) may refer to a single arbitrator). Again, it is important to reiterate the point that the analysis undertaken with regard to these sections relies heavily on the written code. Although the decisions rendered and the factors that may impinge upon those decisions are also important considerations, an analysis of decisions is beyond the scope of this thesis. However, the intention was to investigate these matters when interviewing the research participants. Unfortunately, none of the participants who agreed to participate in this research study sought resolution for the harassment they experienced in their workplaces in a manner involving the Labour Relations Board, and I was unable to contact anyone who had.

89 *For the purposes set out in section 82, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limitation, may*

(a) make an order setting the monetary value of an injury or loss suffered by an employer, trade union or other person as a result of a contravention of a collective agreement, and directing a person to pay a person all or part of the amount of that monetary value,

Section 89 (a) provides one location at which the settlement of a dispute between the union and employer may be tailored to an individual employee ("other person").

(b) order an employer to reinstate an employee dismissed in contravention of a collective agreement,

This subsection may have an impact with regard to harassment grievances. Aggarwal and Gupta (2006) point to the legal requirement that a union provide representation to a member accused of harassing another union member. According to this section, an employer also has an obligation to that employee. If the harassing employee is dismissed and is and later found to have been dismissed without just cause, the employer may be held liable and ordered to reinstate that employee. Thus, alleged harassers are legally entitled to be represented by their unions and must not be dismissed by their employers "in contravention of a collective agreement."

(c) order an employer or trade union to rescind and rectify a disciplinary action that was taken in respect of an employee and that was imposed in contravention of a collective agreement,

Similar to Section 89 (b), this subsection, as well as subsection 89 (d), are of consequence with regard to harassment grievances. As previously mentioned, Aggarwal and Gupta (2006) note that a union member accused of harassing another

union member is nonetheless entitled to representation by his or her union. If the employee is disciplined without just cause, or that discipline is deemed to be excessive or otherwise in contravention of a collective agreement, both the union and employer may be required to rescind and rectify the disciplinary action. It was noted in the comments under Section 84(1) that a union's obligation to represent both a woman who has been harassed and her harasser may lead to a result that could cause embarrassment to a union (Aggarwal & Gupta, 2006, p. 145). This potential for embarrassment could compel union representatives to proceed "within 'the four walls' of the union" (Aggarwal & Gupta, 2006, p. 144), thereby jeopardizing the complainant's odds of receiving fair treatment.

> *(d) determine that a dismissal or discipline is excessive in all circumstances of the case and substitute other measures that appear just and equitable,*
>
> *(e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement,*
>
> *(f) dismiss or reject an application or grievance or refuse to settle a difference, if in the arbitration board's opinion, there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference,*

Section 89 (f) could seriously impact women experiencing gender harassment in the workplace by preventing them from seeking redress through the grievance process. Collective agreements generally contain timelines associated with grievance procedures, but in Chapter One it was noted that, of women experiencing sexual harassment, approximately half of them attempt to ignore it (Sandroff, 1988, as cited in Aggarwal 1992, p. 3). Obviously, attempting to ignore sexual harassment

could result in a woman delaying filing a grievance. If the delay was deemed to be great enough so as to be considered "unreasonable," the grievance could be rejected or dismissed by the arbitration board as set out in Section 89(f).

> *(g) interpret and apply any Act intended to regulate the employment relationship of the persons bound by a collective agreement, even though the Act's provisions conflict with the terms of the collective agreement, and*

This subsection establishes that a collective agreement does not reign supreme in labour relations insofar as it may contradict other Acts intended to regulate employment relationships. This subsection could be useful to address situations in which women face workplace harassment and where adequate provisions to respond to it are not contained in a collective agreement.

> *(h) encourage settlement of the dispute and, with the agreement of the parties, the arbitration board may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.*

Section 89(h) is significant with regard to gender harassment grievances. According to this subsection, a union may be "encouraged" to reach settlement with the use of mediation, which is, incidentally, consistent with Section 2 (h) of the *Code*, which "encourages the use of mediation as a dispute resolution mechanism." If the union and employer agree to mediation or conciliation, a woman who files a harassment grievance may be forced to either participate in this process or forego resolution. The potential for a woman being treated unfairly at this juncture, as a result of being forced to participate in mediation or conciliation with an alleged harasser, is substantial. It seems the only choice the grievor has if her union agrees to proceed by way of mediation, unless the process can be undertaken without the

grievor's involvement, is to participate in mediation or abandon the search for resolution of her grievance. Therefore, this section creates circumstances in which the grievor may appear to be obstinate, disinterested, or unappreciative of her union's assistance. In all likelihood, however, a grievor's reluctance to participate in mediation would result from being forced into a process that is not of her choosing, in which she is required to participate in mediation with someone who has potentially wreaked havoc in her life. A related concern with regard to Section 89(h) is that what constitutes "encouragement" is open to interpretation and may in reality result in coercion. This is a particular concern for women perceived as workplace "trouble-makers," a label women attempting to resolve harassment may find themselves wearing (BC Federation of Labour Women's Rights Committee and Women's Research Centre, 1980, p. 22; Carr et al., 2004), likely undeservedly.

In addition to the problems already expressed, that the arbitration board could invoke "other procedures" to encourage settlement of the dispute does not allow women facing the arbitration process to anticipate what they might expect in relation to that process. Regardless of whether mediation, conciliation or other procedures might produce positive results, it is unfair to compel a woman to participate in an exercise that is unclear, and with someone who has, often flippantly and without reservation, treated her disrespectfully. In my personal situation, when I was advised that I would be "encouraged" to participate in mediation, I was immediately certain that I would be proceeding no further. I was unwilling to commit to such a process, as it seemed to me to require that I admit at least fifty percent responsibility for my situation, which I could not. For the aforementioned reasons, this subsection

provides yet one more location in the process where women may feel stymied by the lack of information and autonomy available to them when seeking redress for harassment.

Fees and costs

90 (1) Unless the provision required under section 84 or 85 provides otherwise, each party to an arbitration under section 84, 85, 104 or 105 must bear

(a) its own fees, expenses and costs,

(b) the fees and expenses of a member of an arbitration board that is appointed by or on behalf of that party, and

(c) equally the fees and expenses of the chair of the arbitration board or a single arbitrator, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.

(2) If the director appoints a single arbitrator or the chair of an arbitration board under section 86, each party must pay 1/2 the remuneration and expenses of the person appointed, unless the arbitration board allows another person to participate in the hearing in which case the arbitration board may direct that a portion of the fees and expenses of the chair be borne by that person.

(3) If the director appoints a member of an arbitration board under section 86 on the failure of one of the parties to make the appointment, that party must pay the remuneration and expenses of the person appointed.

Section 90 (1) provides one of the tangible benefits of belonging to a union; the union foots the financial costs of arbitration. Regrettably, as has already been mentioned, the fact that the union is responsible for costs may also influence their decision about whether to proceed to arbitration.

Delay by arbitration board

91 If a difference has been submitted to arbitration and a party to the arbitration complains to the minister that the arbitration board has failed to render a decision in a reasonable time, the minister may, after

consulting the parties and the arbitration board, issue an order the minister considers necessary to ensure a decision will be rendered without further undue delay.

Powers of arbitration board

92 (1) An arbitration board may

(a) determine its own procedure,

(b) receive and accept evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law,

Section 92(1) establishes that an arbitration board has the power to determine its own procedures and deal with evidentiary matters as it sees fit. This section presents an enormous and fundamental difficulty for women seeking resolution for workplace gender harassment. Unless arbitration board processes are specified in a public location such as the *Labour Relations Code* (1996) or Board procedural guidelines, which they are not save for the inadequate information available in the Labour Relations Board's Code Guide, Chapter 9 (at http://www.lrb.bc.ca/codeguide/chapter9.htm, accessed March 20, 2009), women (considering) seeking resolution in this manner will have no idea what to expect. Furthermore, whether matters of procedural fairness can be evaluated in circumstances where an arbitration board is permitted to determine its own procedure is questionable, possibly making Section 12 (duty of fair representation) complaints all the more difficult to substantiate.

(c) determine prehearing matters and issue prehearing orders,

(d) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

(i) work is or has been done or commenced by employees,

(ii) an employer carries on business, or

(iii) anything is taking place or has taken place concerning a matter referred to the arbitration board under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it, and interrogate any person in relation to it, and

(e) authorize a person to do anything the arbitration board may do under paragraph (d) and report to the arbitration board in the presence of the parties or their representatives as a witness subject to cross examination by each party.

(2) The jurisdiction of an arbitration board to hear and determine a difference does not cease until the matters in dispute have been finally resolved.

This subsection permits the board, which may, as has been mentioned, consist of a single arbitrator, to maintain jurisdiction until a matter has been resolved. Thus, if the union and employer consider the matter to be resolved, it is, whether or not the complainant considers it to be so. A recent decision of the British Columbia Human Rights Tribunal may have been impacted by Section 92(2) of the *Labour Relations Code* (1996). The Tribunal dismissed the woman's complaint, partly based on the Tribunal member's opinion that remedial measures in the workplace were already being taken and the arbitrator retained jurisdiction to deal with "continuing" complaints (*Rush v. City of Richmond*, 2008):

> the arbitrator [in deciding a previous grievance from the same workplace] retained jurisdiction for three years from the date of the Consent Order over the matter before him and any continuing complaint of harassment or sexual harassment.

The fact that a decision of the BC Human Rights Tribunal might be impacted by a decision of the BC Labour Relations Board would likely not be anticipated by a

woman filing a complaint of gender discrimination in accordance with the BC *Human Rights Code* (1996).

Summons to testify

93 (1) An arbitration board may, at the request of a party to the arbitration or on its own motion, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things it considers requisite to a full consideration of matters before the arbitration board, in the same manner as a court of record in civil cases.

The fact that women who are harassed often find it difficult to obtain support, at least openly, from their co-workers (Carr et al., 2004) could be influenced by their awareness of circumstances like the arbitration board's ability to compel witnesses, a power granted by most legal processes. Women who work with the woman being harassed may be reluctant to provide encouragement not only because of their concern with being perceived as trouble-makers and suffering related consequences, but because they may be compelled to testify.

(2) If an arbitration board consists of more than one person, the chair of the arbitration board may exercise all the authority of the arbitration board under subsection (1).

Decision of arbitration board

94 If a collective agreement provides for submission of a difference to an arbitration board consisting of more than one arbitrator, the decision of a majority of the arbitrators is the decision of the arbitration board, but if there is no majority decision, the decision of the chair of the arbitration board is the decision of the arbitration board.

Effect of decision

95 The decision of an arbitration board is binding

(a) on the parties,

(b) *in the case of a collective agreement between a trade union and an employers' organization, on the employers who are bound by the agreement and who are affected by the decision,*

(c) *in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, on the council, the constituent trade unions in it and the employer or employers who are covered by the agreement and who are affected by the decision, and*

(d) *on the employees who are bound by the collective agreement and who are affected by the decision,*

and they must comply in all respects with the decision.

Section 95 establishes that decisions of arbitration boards are binding on all employees who are bound by the collective agreement and affected by the decision.

Filing decision

96 *An arbitration board must, within 10 days of issuing an award, file a copy of it with the director who must make the award available for public inspection.*

Section 96 requires that decisions of arbitration boards must be filed with the Collective Agreement Arbitration Bureau. This ensures that decisions of arbitration boards constituted by virtue of collective agreements are forwarded to the Bureau as a function of the Bureau's administrative role regarding arbitration boards.

Act not to apply

97 *The Commercial Arbitration Act does not apply to an arbitration under this Code.*

Reference to Labour Relations Board

98 *An arbitration board may, at any stage of an arbitration, refer to the board for a binding opinion and decision a question of labour relations policy or interpretation of this Code arising in the course of the arbitration.*

Appeal jurisdiction of Labour Relations Board

99 (1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred to it back to the arbitration board, stay the proceedings before the arbitration board or substitute the decision or award of the board for the decision or award of the arbitration board, on the ground that

(a) a party to the arbitration has been or is likely to be denied a fair hearing, or

(b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.

Section 99(1) permits people affected by an arbitration decision to appeal on the grounds that a fair hearing was or will be denied, or if the decision is inconsistent with the principles expressed in the *Code*. This is a valuable option for women seeking resolution for workplace gender harassment, particularly if they feel they may be denied a fair hearing. There is a decent amount of information regarding the procedure for invoking Section 99 in the "Information Bulletin" entitled "Review of Arbitration Awards" on the Labour Relations Board's website. It is important to note that there are deadlines associated with filing an appeal under this section, and that rule 28, found on the Board's "rules" web page, provides detailed procedures about how to file an appeal. Examination of the results of appeals launched in accordance with sections 99 and 100 was not undertaken as part of this thesis, but would be interesting to know.

(2) An application to the board under subsection (1) must be made in accordance with the regulations.

Appeal jurisdiction of Court of Appeal

100 On application by a party affected by a decision or award of an arbitration board, the Court of Appeal may review the decision or award

if the basis of the decision or award is a matter or issue of the general law not included in section 99 (1).

The following information regarding the Court of Appeal for British Columbia is found on the BC courts website (at http://www.courts.gov.bc.ca/court_of_appeal/, accessed June 2008; emphasis added):

> The Court of Appeal is the highest court in the province. It hears appeals from the Supreme Court, from the Provincial Court on some criminal matters, and *reviews and appeals from some administrative boards and tribunals*.

Thus, as denoted in Section 100, an employee could appeal an arbitration decision if the basis of that decision was a "matter or issue of the general law not included in section 99 (1)." Again, the availability of an appeal mechanism is a welcome option. Examination of the results of appeals launched in accordance with sections 99 and 100 was also not undertaken as part of this thesis, but would also be interesting to know.

Decision final

101 *Except as provided in this Part, the decision or award of an arbitration board under this Code is final and conclusive and is not open to question or review in a court on any grounds whatsoever, and proceedings by or before an arbitration board must not be restrained by injunction, prohibition or other process or proceeding in a court and are not removable by certiorari or otherwise into a court.*

This section establishes that, except where expressly indicated (by appeal to the Labour Relations Board or the Court of Appeal, Section 99 and 100 respectively), the arbitration board has full authority and its decision is final and binding.

Enforcement

102 (1) If a party or a person has failed or neglected to comply with the decision of an arbitration board, a party or person affected by the decision may, after the expiration of 14 days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the Supreme Court registry a copy of the decision in the prescribed form.

(2) A decision filed under subsection (1) must be entered as if it were a decision of the court, and on being entered is deemed, for all purposes except an appeal from it, to be an order of the Supreme Court and enforceable as an order of the court.

Repealed

103 [Repealed 1997-27-24.]

Division 4 — Expedited Arbitration

Expedited arbitration

104 (1) A party to a collective agreement may refer a difference respecting its interpretation, application, operation or alleged violation, including a question as to whether a matter is arbitrable, to the director for resolution by expedited arbitration.

Section 104(1) provides that a party to a collective agreement (union or employer) may request that a matter in dispute be dealt with by way of expedited arbitration, subject to subsections (2) to (10) below.

(2) No difference may be referred to the director under this section unless

(a) the grievance procedure under the collective agreement has been exhausted, and

(b) the application is made within 45 days of the completion of the steps of the grievance procedure preceding a reference to arbitration.

(3) No difference under a collective agreement may be referred to the director under this section if

(a) the difference has been referred to arbitration under the collective agreement by the party who wishes to refer it under this section, or

(b) the time, if any, stipulated in or permitted under the collective agreement for referring the difference to arbitration has expired.

(4) If a difference is referred to the director within the time periods specified in this section, the director

(a) must appoint an arbitrator to hear and determine the matter arising out of the difference,

(b) must set the date on which the hearing by the arbitrator will commence, which date must be within 28 days after the day on which the difference was referred to the director, and

(c) may, if a party so requests and the other party agrees, appoint a settlement officer to assist the parties in settling the grievance before the hearing.

(5) If a settlement officer is appointed under subsection (4), the settlement officer must, within 5 days after the appointment or within such further time as the director may allow,

(a) inquire into the difference,

(b) endeavour to assist the parties in settling the difference, and

(c) report to the director on the results of the inquiry and the success of the settlement effort.

Comments in relation to subsection (5) would be identical to those entered with regard to Section 87(1) regarding the potential for coercion as the settlement officer endeavours to assist the parties in settling the difference.

(6) If the parties are unable to settle the difference, the arbitrator appointed under subsection (4) must proceed to hear and determine the matter arising out of the difference and must, subject to subsection (7), issue a decision within 21 days after the conclusion of the hearing.

(7) *If jointly requested to do so by the parties to the difference, the arbitrator appointed under subsection (4) must, if possible, issue an oral decision within one day after the conclusion of the hearing and must issue written reasons within the time specified in subsection (6).*

(8) *An arbitrator appointed under subsection (4) has all the power and jurisdiction of an arbitrator appointed under this Code or the collective agreement between the parties to the difference.*

(9) *This section applies to every party to a collective agreement and every person bound by a collective agreement, despite any provision in the collective agreement.*

(10) *The other provisions of this Part apply to an arbitration under this section, with the modifications necessary to accommodate appointments and expedited processes under this section.*

Consensual mediation-arbitration

105 (1) *Despite any grievance or arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 84 (3), the parties to the collective agreement may, at any time, agree to refer one or more grievances under the collective agreement to a single mediator-arbitrator for the purpose of resolving the grievances in an expeditious and informal manner.*

Comments relating to this section would be along the same line as those entered with regard to Section 89(h), concerning the potential for coercion and the lack of authority of the grievor. However, this section further undermines the clarity of the process by permitting a single mediator or arbitrator to address a grievance regardless of whether or not this option is expressly written in a collective agreement. Thus, a woman reading a collective agreement may decide to file a grievance based on her understanding of the procedures outlined in the collective agreement, and then find herself in a position where she is forced to adhere to different procedures as denoted in Section 105(1).

(2) *The parties must not refer a grievance to a mediator-arbitrator unless they have agreed on the nature of any issues in dispute.*

Again, although her union may choose to consult the grievor, the union and employer are the only parties possessing the authority to forward a grievance to a mediator-arbitrator. Thus, the "party" who is arguably the most deeply affected by, and has the most intimate knowledge of, the events leading to the grievance, and is therefore the most deserving of redress, is not legally entitled to comment on the "nature of the issues in dispute."

> *(3) The parties may jointly request the director to appoint a mediator-arbitrator if they are unable to agree on one, and the director may make the appointment.*
>
> *(4) Subject to subsection (5), a mediator-arbitrator appointed by the director must begin proceedings within 28 days after being appointed.*
>
> *(5) The director may direct a mediator-arbitrator to begin proceedings on such date as the parties jointly request.*
>
> *(6) The mediator-arbitrator must endeavour to assist the parties to settle the grievance by mediation.*

The concern again exists here that pressure may be applied to one or both of the parties to reach a settlement in this manner, potentially affecting the process and outcome for the grievor.

> *(7) If the parties are unable to settle the grievance by mediation, the mediator-arbitrator must endeavour to assist the parties to agree on the material facts in dispute and then must determine the grievance by arbitration.*

Comments for this section are similar to those entered for Section 105(6), above. In addition, the fact that the mediator becomes the arbitrator in cases where the parties are unable to settle the grievance by mediation adds an additional layer of apprehension, discussed under Section 105(8), below.

(8) *When determining the grievance by arbitration, the mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as he or she considers appropriate.*

This section, when considered concurrently with Section 105(7) may be problematic in the sense that the person who was acting as mediator, and who was unable to achieve a resolution by that method, then becomes the arbitrator. If, when acting as the mediator, the agent was unable to assist the parties to reach a resolution, it is not improbable that he or she may become frustrated or lose patience with one or both of the parties, and choose to limit the evidence, possibly in a biased manner. If so, this limiting of evidence may impact the grievor's case, particularly if witnesses are barred from providing evidence that could benefit the grievor. In addition to the concern of limited evidence, the latitude extended to the mediator-arbitrator by the language in this section ("may impose such conditions as he or she considers appropriate") precludes comprehension of the procedures one might expect to encounter when seeking resolution for harassment.

(9) *The mediator-arbitrator must give a succinct decision within 21 days after completing proceedings on the grievance submitted to arbitration.*

(10) *Sections 89 to 102 apply in respect of a mediator-arbitrator and a settlement, determination or decision under this section.*

Division 5 — Special Officer

Special officer

It is unlikely that the use of a special officer would result from a harassment situation, as this section is retained for use "in the interest of industrial peace," which would generally refer to addressing incidents of job action. Thus, this division is relatively inapplicable to women seeking resolution for harassment.

106 (1) *If during the term of a collective agreement there is or is a likelihood of a dispute or difference arising out of or relating to the agreement, the minister may in the interest of industrial peace appoint a special officer.*

(2) *On his or her appointment, the special officer must investigate the dispute or difference and may*

(a) *confer with the parties,*

(b) *hold hearings,*

(c) *make recommendations,*

(d) *make orders he or she considers necessary or advisable, including, without limitation, orders that the dispute or difference be submitted to a specified stage or step in the grievance procedure under the collective agreement, or*

(e) *arbitrate the dispute or difference himself or herself.*

Effect of order

107 *An order made by a special officer is binding on all persons bound by the collective agreement and all parties to the dispute or difference.*

Interim order

108 *When a special officer makes an order on a matter not provided for by the collective agreement, or which differs from the provisions of the collective agreement, the order is binding on the parties to the dispute or difference for a period not exceeding 30 days.*

Powers

109 *For the purpose of investigating a dispute or difference or holding a hearing, a special officer has the powers of a commissioner under sections 12, 15 and 16 of the Inquiry Act and may enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where*

(a) *work is or has been done or commenced by employees,*

(b) *an employer carries on business, or*

(c) *anything is taking place or has taken place concerning a matter referred to the special officer under this Code,*

and may inspect any work, material, appliance, machinery, equipment or thing in it, or interrogate any person in relation to it.

Evidence

110 *For the purpose of a hearing, a special officer*

(a) may receive and accept the evidence and information on oath, affidavit or otherwise that, in his or her discretion, he or she considers advisable, whether or not admissible as evidence in a court of law, and

(b) must determine his or her own procedure, but must give an opportunity to an interested party to present evidence and make representations.

Frequency of appointment

111 *The minister may not appoint a special officer more than twice in connection with the same dispute or difference.*

Form of order

112 *(1) An order of a special officer must be in writing signed by the special officer.*

(2) The special officer must promptly

(a) deliver a copy of his or her order to the board, the employer and the trade union, and

(b) take reasonable steps to communicate the provisions of his or her order to persons bound or affected by it.

Notice of appointment to be sent to board

113 *The minister must send to the board a copy of every appointment of a special officer under section 106.*

Other provisions to apply

114 *The other provisions in this Part apply to matters arising under this Division.*

Part 9 — Labour Relations Board

Labour Relations Board

The Labour Relations Board, specifically its Collective Agreement Arbitration Bureau, has the responsibility to administer arbitration procedures. If a collective agreement contains a procedure for referring a grievance to arbitration and constitution an arbitration board that is mutually agreeable to both parties, the matter may be settled according to those procedures, and the decision filed with the Collective Agreement Arbitration Bureau. Although the Collective Agreement Arbitration Bureau is an entity which "operates as part of the Labour Relations Board and is made up of Board employees" (Code Guide, Chapter 9, at http://www.lrb.bc.ca/codeguide/chapter9.htm, accessed on May 25, 2008), the arbitration boards constituted by the Collective Agreement Arbitration Bureau in cases where one of the parties makes application to the Board in this regard operate at arm's length from the Labour Relations Board. Sections 88, 98, and 99 are the only sections of the *Code* directly involving the Labour Relations Board in the processes related to grievance arbitration. Section 88 establishes that the Board may be asked to assist in cases in which "a difference arises during the term of a collective agreement, and in the board's opinion delay has occurred in settling it or it is a source of industrial unrest between the parties." In such cases, the options open to the Labour Relations Board under Section 88 are to "(a) inquire into the difference and make recommendations for settlement"; and, "(b) if the difference is arbitrable, order that it be immediately submitted to a specified stage or step in the grievance procedure under the collective agreement or, whether or not the difference is

arbitrable, request the minister to appoint a special officer." Section 98 indicates that the Labour Relations Board can be asked to rule on "a question of labour relations policy or interpretation of this Code arising in the course of the arbitration," and Section 99 establishes the appeals jurisdiction of the Labour Relations Board. As a result of the fact that the Labour Relations Board has limited relevance to the grievance process, and because the pertinent sections have already been commented upon previously, limited remarks are required for the Sections in this Part.

115 (1) The Labour Relations Board is continued consisting of a chair, vice chairs and as many members equal in number representative of employers and employees, respectively, as the Lieutenant Governor in Council considers proper, all of whom are to be appointed by the Lieutenant Governor in Council after a merit based process.

(2) For the purposes of subsection (1), the chair must be consulted before the appointment of vice chairs and members.

Application of Administrative Tribunals Act

115.1 Sections 1 to 10, 43, 46, 47 (1) (c), 48, 49, 56, 57, 58 (1) and (2) and 61 of the Administrative Tribunals Act apply to the board.

Divisions and officers of the Labour Relations Board

116 (1) There are to be 2 divisions of the board called the Mediation Division and the Adjudication Division.

(2) The chair may designate one or more vice chairs as associate chairs for either or both of the Mediation and Adjudication Divisions, and designate another vice chair as a registrar of the board.

(3) If the associate chair of a division is absent or unable to act, or the office of an associate chair is vacant, the chair may act as associate chair or may assign a vice chair to act.

(4) The chair may change an assignment or designation under this section.

Panels

117 (1) The chair may establish one or more panels of the board.

(2) A panel has the power and authority of the board in matters referred to the panel by the chair or coming before it under rules of the board made under this Code.

(3) Two or more panels may proceed with separate matters at the same time.

(4) The chair may refer a matter that is before the board to a panel or a matter that is before a panel to the board or another panel.

(5) A panel of the board consists of

(a) the chair or a vice chair,

(b) the chair and 2 or more vice chairs,

(c) 3 or more vice chairs,

(d) 3 or more vice chairs, and members, equal in number, representative of employers and employees respectively,

(e) the chair or a vice chair, and one member representative of employees and one member representative of employers, or

(f) the chair or a vice chair, and members, equal in number, representative of employers and employees respectively.

(6) The chair may terminate an appointment to a panel and may fill any vacancy on a panel.

Quorum

118 (1) The board or a panel of the board must not proceed with a matter unless a quorum is present and remains present throughout the proceeding.

(2) A quorum of the board consists of the chair or a vice chair, and members, equal in number, representative of employers and employees respectively.

(3) A quorum of a panel consists of the chair or the vice chair, if appointed under section 117 (5) (a), or all members of the panel, including the chair or vice chair.

Proceedings

119 (1) The chair must preside at proceedings of the board and of all panels of which he or she is a member, and a vice chair must preside over all other panels.

(2) The decision of a majority of the members of the board or of a panel present at a proceeding is the decision of the board or panel, but if there is no majority, the decision of the chair or presiding vice chair governs.

Question of law

120 The chair may establish a panel to which the board or another panel may refer a question of law respecting the interpretation of this Code, and its ruling is binding on the board or on the other panel.

Delegation

121 (1) The chair may exercise any power or perform any duty or function of the board, an associate chair or member of the board.

(2) The chair may delegate to the associate chairs, the registrar or one or more of the other members a power, duty or function of the board or of the director.

Employees of the board

122 (1) The board may, despite the Public Service Act, employ a secretary and other officers and employees it considers necessary for the purposes of this Code, and may determine their duties, conditions of employment and remuneration.

(2) This Code and the Public Service Labour Relations Act do not apply to the members of the board or the secretary, or the officers and employees of the board.

(3) The chair must designate an employee employed under subsection (1) as the information officer to advise the public with respect to this Code and its application to labour relations in British Columbia.

Repealed

123 [Repealed 2004-45-110.]

Evidence

124 (1) The board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it considers proper, whether or not the evidence is admissible in a court of law.

(2) The board may request and receive a report from a person it appoints to investigate an application or to investigate and attempt to settle a dispute under this Code, a collective agreement or the regulations, and, despite section 146 (3), the board must disclose the report to the parties.

(3) Information relating to membership or any record that may disclose whether a person is or is not a member of a trade union produced in a proceeding before the board is for the exclusive use of the board and its representatives.

(4) Except with the consent of the board, a person must not disclose whether a person is or is not a member of a trade union.

Summons and discovery of documents

125 On the recommendation of an officer appointed under section 14, 87 or 104 (4) (c), or on its own motion, the board may summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the officer or the board considers necessary to a full investigation and consideration of matters within the board's jurisdiction in the same manner as a court of record in civil cases.

Practice and procedure

126 (1) The board must determine its own practice and procedure, but must give full opportunity to the parties to a proceeding to present evidence and make submissions.

(2) The board, subject to the minister's approval, may make rules governing its practice and procedure and the exercise of its powers and establish forms it considers advisable.

With regard to subsections (1) and (2) above, the Board's Information Officer (G. Pocklington, personal communication, March 24, 2009) confirmed that the reference to "practice and procedure" outlined in Section 126 does not apply to

arbitration boards. However, Section 92(1)(a) establishes that arbitration boards also determine their own procedure.

Offices of the board

127 (1) The principal office of the board must be at or near Vancouver, and the board and panels of the board must sit at the places the chair decides.

(2) Documents may be filed with the board at its principal office or at other offices throughout British Columbia designated for that purpose by the chair.

Publication of decisions

128 The board must render its decisions within a reasonable period of time and make all its decisions in proceedings under this Code available in writing for publication.

Oath of office

129 A member of the board, before acting as a member, must take and sign before a notary public or commissioner for taking affidavits for British Columbia, and file with the minister, an oath or affirmation of office in the following form:

I, _____, do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of chair (or vice chair or member) of the Labour Relations Board, and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the board

Repealed

130 and 131 [Repealed 2003-47-38.]

General guidelines

132 (1) The board may formulate general guidelines to further the operation of this Code but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.

Section 132(1) provides a stellar example of the concerns that have been expressed with regard to processes established by the *Labour Relations Code*

(1996) and the Labour Relations Board. The section emphasizes the fact that even if the Labour Relations Board establishes guidelines, which it is not obligated to do, it is not bound by its own guidelines in virtually any of its operations. The general guidelines referred to in subsection (3) below are available on the Labour Relations Board website at http://www.lrb.bc.ca/ (accessed March 7, 2009), and many contain some sort of disclaimer indicating that they are not binding on the board.

> *(2) In formulating general guidelines the board may request that submissions be made to it by any person.*
>
> *(3) The board must make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions.*

Hearing of complaint

This section outlines the options available to the Board in dealing with complaints in relation to several sections of the *Code*. Section 133 is essentially inapplicable to women seeking resolution for gender harassment in the workplace, as they would likely file complaints only with regard to Section 12, Duty of Fair Representation. Section 12 complaints are dealt with in accordance with the procedures outlined in Section 13 of the *Labour Relations Code* (1996).

> *133 (1) If, on application or complaint by any interested person, under section 14, this section or another provision of this Code or regulations, or on its own motion, the board is satisfied that any person has contravened this Code, a collective agreement or the regulations, it may, in its discretion, do one or more of the following:*
>
> > *(a) order a person to do any thing for the purpose of complying with this Code, a collective agreement or the regulations, or to refrain from doing any act, thing or omission in contravention of this Code, a collective agreement or the regulations;*
> >
> > *(b) order a person to rectify a contravention of this Code or the regulations;*

(c) refuse to make an order, despite a contravention of this Code, a collective agreement or the regulations, if the board believes it is just and equitable to do so in view of the improper conduct of the person making the application or complaint;

(d) except in relation to conduct regulated by Part 5, make an order setting the monetary value of an injury or loss suffered by a person as a result of a contravention of this Code, a collective agreement or the regulations, and directing a person to pay to the person suffering the injury or loss the amount of that monetary value;

(e) order an employer to reinstate an employee discharged in contravention of this Code, a collective agreement or the regulations;

This subsection, in conjunction with Section 84(1), may have an effect on a union harassment grievance. The union is obligated to represent an alleged harasser if he has been discharged in case the union, or subsequently, the Labour Relations Board, finds that the employee was discharged by the employer in contravention of the *Code* or collective agreement.

(f) make another order or proceed in another manner under this Code, consistent with section 2, that the board considers appropriate.

(2) If a request is made to the board to exercise its discretion under section 65 or another provision conferring on the board a discretion to prohibit, restrict, confine, regulate, control, direct or require the performance of any act or thing, the board may exercise its discretion and make an order, impose conditions or proceed in a manner it considers to be in furtherance of the purposes set out in section 2.

(3) If at any time before or during a proceeding the board or a person appointed by it is able to settle all or part of the differences between the parties to the proceeding on terms not contrary to this Code, a collective agreement or the regulations, the board may issue a consent order setting out the terms of settlement agreed to by the parties, and this consent order has the same force and effect as an order under subsection (1).

(4) If in the board's opinion an application or complaint is without merit, it may reject the application or complaint at any time.

(5) If an application or complaint is made under this section or the minister makes a direction under Part 6 the board may, in its discretion, after giving each party to the matter an opportunity to be heard, make an interim order or designation pending a final resolution of the application or complaint under this section or a designation under Part 6.

(6) If the board is satisfied in any proceedings under this Code that a mistake has been made in naming or not naming a person as a party to the proceeding the board may direct that the name of the person be substituted, added or deleted as a party to the proceeding.

Conditions and undertakings

134 (1) If the board makes or may make a designation, decision or order under this Code, it may require, at any time before or after or both before and after the making of the designation, decision or order, that

(a) certain conditions specified by the board be observed or performed, or

(b) the applicant or complainant undertake to act or refrain from acting in a manner specified by the board.

(2) A breach of an undertaking or a refusal or neglect to observe or perform a condition specified by the board under subsection (1) is a contravention of this Code.

Filing order in Supreme Court

135 (1) The board must on request by any party or may on its own motion file in a Supreme Court registry at any time a copy of a decision or order made by the board under this Code, a collective agreement or the regulations.

(2) The decision or order must be filed as if it were an order of the court, and on being filed it is deemed for all purposes except appeal from it to be an order of the Supreme Court and enforceable as such.

(3) For the purposes of this section, a designation or direction under Part 6 is deemed to be a decision or order of the board.

Jurisdiction of board

136 (1) Except as provided in this Code, the board has and must exercise exclusive jurisdiction to hear and determine an application or complaint under this Code and to make an order permitted to be made.

Section 136, in conjunction with section 137, establishes exclusive jurisdiction of the Labour Relations Board in dealing with matters or disputes determined to have arisen out of a collective agreement. Other tribunals, such as the BC Human Rights Tribunal, and the courts recognize the Board's jurisdiction to hear and make decisions regarding situations involving unionized employees and workplaces.[6] The Labour Relations Board's Code Guide states the following with regard to the Board's jurisdiction (at http://www.lrb.bc.ca/codeguide/chapter2.htm, accessed March 22, 2009):

> . . . the Legislature has given the Board the power to decide the vast majority of matters that can arise in labour relations. The courts retain their jurisdiction to review decisions of the Board under the *Judicial Review Procedure Act*.

For some women (see, for instance, *Moznik v. Richmond [City of] et al., 2006*) Section 136 may prevent them from achieving satisfactory resolution for workplace gender harassment, as the focus of the decision may be collective (for all employees in the workplace) rather than repairing the harm done to the individual. In addition, as mentioned previously, women filing complaints with the BC Human Rights Tribunal may be surprised to find their complaint subsequently dealt with by the Labour Relations Board.

> *(2) Without limiting subsection (1), the board has and must exercise exclusive jurisdiction in respect of*
>
> *(a) a matter in respect of which the board has jurisdiction under this Code or regulations, and*
>
> *(b) an application for the regulation, restraint or prohibition of a person or group of persons from*

[6] See, for instance, *Moznik v. Richmond (City of) et al.*, 2006 BCSC 1848.

(i) ceasing or refusing to perform work or to remain in a relationship of employment,

(ii) picketing, striking or locking out, or

(iii) communicating information or opinion in a labour dispute by speech, writing or other means.

Jurisdiction of court

137 (1) Except as provided in this section, a court does not have and must not exercise any jurisdiction in respect of a matter that is, or may be, the subject of a complaint under section 133 or a matter referred to in section 136, and, without limitation, a court must not make an order enjoining or prohibiting an act or thing in respect of them.

Comments made in relation to Section 136 also pertain to Section 137.

(2) This Code must not be construed to restrict or limit the jurisdiction of a court, or to deprive a court of jurisdiction to entertain a proceeding and make an order the court may make in the proper exercise of its jurisdiction if a wrongful act or omission in respect of which a proceeding is commenced causes immediate danger of serious injury to an individual or causes actual obstruction or physical damage to property.

(3) Despite this Code or any other Act, a court must not, on an application made without notice to any other person, order an injunction to restrain a person from striking, locking out or picketing, or from doing an act or thing in respect of a strike, lockout, dispute or difference arising from or relating to a collective agreement.

(4) A court of competent jurisdiction may award damages for injury or losses suffered as a consequence of conduct contravening Part 5 if the board has first determined that there has been a contravention of Part 5.

Finality of decisions and orders

138 A decision or order of the board under this Code, a collective agreement or the regulations on a matter in respect of which the board has jurisdiction is final and conclusive and is not open to question or review in a court on any grounds.

This section emphasizes that a decision or order of the Board is final.

Comments with regard to this section would be similar to those for Section 136

regarding the potential for a decision focusing on the collective rather than an individual's situation.

Jurisdiction of board to decide certain questions

139 *The board has exclusive jurisdiction to decide a question arising under this Code and on application by any person or on its own motion may decide for all purposes of this Code any question, including, without limitation, any question as to whether*

(a) a person is an employer or employee,

(b) an organization or association is an employers' organization or a trade union,

(c) a collective agreement has been entered into,

(d) a person is or what persons are bound by a collective agreement,

(e) a person is or what persons are parties to a collective agreement,

This section is interesting in that, if an employee wished to argue that she was a rightful party to a collective agreement, it appears that she would have the option to make that argument to the Board. However, labour relations practices have clearly established that not individual employees, but their representatives (unions), are parties to collective agreements, as mentioned in the comments related to Section 87. Leading Section 12 decisions are contained on the Labour Relations Board website, with the following excerpt (*Marko Bosnjak, IRC No. C221/89*, p. 4) highlighted regarding the fact that the *union* has the right to decide not to arbitrate:

> . . . A union may refuse to process a grievance to arbitration where the grievance raises a matter that is not in dispute between the parties to the collective agreement. In other words, where the grievor claims a right in the collective agreement which, based upon both the employer's and the union's interpretation, cannot be sustained, there is no obligation to pursue the matter to arbitration . . . .

This excerpt makes a clear distinction between the union and employer ("parties to the collective agreement") and the employee (the "grievor" or "complainant"), as does the following preface to the excerpt, retrieved from http://www.lrb.bc.ca/bulletins/summary.htm, on March 22, 2009:

> The union has no obligation to pursue a grievance when the union and the employer agree on the meaning of the terms of the collective agreement, unless a complainant is able to establish the employer and union have conspired against the complainant in agreeing to the interpretation:

Thus, it is unlikely that, for the purposes of a gender harassment complaint, an argument that an employee was a party to a collective agreement would be successful.

> *(f) a collective agreement has been entered into on behalf of a person,*
>
> *(g) a collective agreement is in full force and effect,*
>
> *(h) a person is bargaining collectively or has bargained collectively in good faith,*
>
> *(i) an employee or a group of employees is a unit appropriate for collective bargaining,*
>
> *(j) an employee belongs to a craft or group exercising technical or professional skills,*
>
> *(k) a person is a member in good standing of a trade union,*
>
> *(l) a person is included in or excluded from an appropriate bargaining unit,*
>
> *(m) an employer is included in or excluded from an accreditation,*
>
> *(n) a person is a dependent contractor,*
>
> *(o) an organization of trade unions is a council of trade unions,*
>
> *(p) a service is essential for the purposes of Part 6,*
>
> *(q) a person is described in section 68 (1),*

(r) a trade union, council of trade unions or employers' organization is fulfilling a duty of fair representation,

Section 139 (r) establishes that the Board has the authority to hear complaints in relation to Section 12. However, complaints may be filed with the BC Human Rights Tribunal in relation to Section 14 of the BC *Human Rights Code* (1996) when a union is alleged to have acted in a discriminatory manner.

(s) a site or place is a site or place of business, operations or employment of an employer,

(t) a person is an ally,

(u) a person is a professional,

(v) a person exercises technical or professional skills, and

(w) an activity constitutes a strike, lockout or picketing.

General powers of board

140 The board, in relation to a proceeding or matter before it, has power to

(a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the board considers necessary to a full investigation and consideration of a matter within its jurisdiction that is before it in the proceeding,

Remarks in relation to Section 14 (a) would be similar to those submitted in relation to Section 93 (1) (Summons to testify).

(b) administer oaths and affirmations,

(c) examine, in accordance with rules of the board, evidence submitted to it respecting the membership of an employee in a trade union seeking certification,

(d) examine documents forming or relating to the constitution or articles of association of

(i) a trade union seeking certification,

(ii) a trade union forming part of a council of trade unions seeking certification, or

(iii) an employers' organization seeking accreditation,

(e) examine records and make inquiries it considers necessary,

(f) require an employer to post and keep posted in appropriate places a notice the board considers necessary to bring to the attention of employees a matter relating to the proceeding,

(g) enter during regular working hours any land, ship, vessel, vehicle, aircraft or other means of conveyance or transport, factory, workshop or place of any kind where

(i) work is or has been done or commenced by employees,

(ii) an employer carries on business, or

(iii) anything is taking place or has taken place concerning a matter referred to it under this Code,

and may inspect any work, material, appliance, machinery, equipment or thing in it and interrogate any person in relation to it,

(h) order that

(i) a representation vote be taken, in accordance with Part 3 and the regulations, among employees affected by the proceeding, before or after a hearing the board may conduct in respect of the proceeding, and

(ii) ballots cast in the vote be sealed in ballot boxes and not counted until the parties to the proceeding have been given an opportunity to be heard by the board,

(i) enter an employer's premises to conduct representation votes during working hours,

(j) authorize a person to do anything the board may do under paragraphs (b) to (g) or paragraph (i) and report to the board,

(k) adjourn or postpone the proceeding,

(l) shorten or lengthen the time for instituting the proceeding or for doing an act, filing a document or presenting evidence in the proceeding,

(m) amend or permit amendment of a document filed in the proceeding, and

(n) add a party to the proceeding at any stage.

Reconsideration of decisions

141 (1) On application by any party affected by a decision of the board, the board may grant leave to that party to apply for reconsideration of the decision.

The Board's website contains an "Information Bulletin" regarding the reconsideration of decisions (http://www.lrb.bc.ca/bulletins/reconsideration.htm, retrieved on April 27, 2009). In that document, it is noted that "[t]he Board will not grant leave unless the applicant demonstrates 'a good arguable case' that it will succeed on one of the established grounds for reconsideration," and that "[e]ven where the test for leave has been met, the Board retains the discretion to deny leave, based on other relevant factors." Thus, even though this section provides that decisions may be reviewed, the likelihood of such an event happening is slim. Conditions upon which such a review may be undertaken are outlined below.

(2) Leave to apply for reconsideration of a decision of the board may be granted if the party applying for leave satisfies the board that

(a) evidence not available at the time of the original decision has become available, or

(b) the decision of the board is inconsistent with the principles expressed or implied in this Code or in any other Act dealing with labour relations.

(3) Leave to apply for reconsideration of a decision of the board under this section may be granted only once in respect of that decision.

(4) *Subsection (1) does not apply to a decision of the board to grant or deny leave under subsection (2) or to a decision made by the board on reconsideration.*

(5) *An application under subsection (1) must be made within 15 days of the publication of the reasons for the decision that is the subject of the application.*

(6) *If an application for leave is made under subsection (1), another party affected by the decision may apply for leave under that subsection within*

(a) the period referred to in subsection (5), or

(b) 5 days of receiving the application,

whichever is longer.

(7) *On reconsideration under this section the board may vary or cancel the decision that is the subject of reconsideration or may remit the matter to the original panel.*

(8) *An application under this section must be made in accordance with the regulations.*

Variation and continuation of certification or accreditation

142 *The board, on application by any party or on its own motion, may vary or cancel the certification of a trade union or the accreditation of an employers' organization.*

Declaratory opinion

143 *The board, on application by an employer or trade union, or on its own motion, may give a declaratory opinion on a matter arising under this Code if it considers it appropriate to do so.*

APPENDIX E

LINDA TUHIWAI SMITH'S "TWENTY-FIVE INDIGENOUS PROJECTS"

1. *Claiming* [or *reclaiming*] (the right to be treated with respect in the workplace);
2. *Testimonies* (of women wronged or harmed);
3. *Story telling* (each woman's personal story of harassment contributes to the collective stories of women harassed);
4. *Celebrating survival* (this project requires no explanation for women who have been harassed in the workplace!);
5. *Remembering* (honouring struggles to regain humanity and dignity after being dehumanized by harassment and the instruments established to deal with it);
6. *Intervening* (Smith (1999, p. 147) explains this project with the statement that "[i]ntervening [which is highly relevant to the current research project] takes action research to mean literally the process of being proactive and of becoming involved as an interested worker for change. Intervention-based projects are usually designed around making structural and cultural changes);
7. *Connecting / reconnecting* (with our inner beings, with other women who have been through similar experiences and with those who can support us);
8. *Reading* (deconstructing legislation which has been, for the most part, created and instituted by, and possibly for the benefit of, dominant members of Canadian society);
9. *Writing* (anything that challenges, circumvents, or resolves legislation and processes that don't work for women);
10. *Representing* (ourselves in a legal system that is foreign and largely inaccessible to laypersons or the marginalized);

11. *Gendering* (the workplace);
12. *Envisioning* (a workplace where all are valued and legislation isn't required to ensure that "minorities" receive the respect they deserve);
13. *Reframing* (a history of [male] domination in society and the workplace)
14. *Restoring* ("of wellbeing spiritually, emotionally, physically and materially"; Smith, 1999, p. 155);
15. *Democratizing* (the trade union and the legislative creation process);
16. *Networking* (with others who can provide support);
17. *Naming* (our reality or what we have endured in lay or non-legal terms);
18. *Protecting* (each other and our right to a safe and dignified workplace);
19. *Creating* (safer spaces and workplaces);
20. *Negotiating* (the research project methods and outcomes with the participant(s); with governments and unions for greater protection against, and resolution of, workplace harassment);
21. *Discovering* (how we might better make the existing legislation work for women who are harassed); and,
22. *Sharing* (knowledge and experiences with one another).

APPENDIX F

INTERVIEW PROTOCOL AND INTERVIEW QUESTIONS

Interview Protocol

Participants were advised of the interview procedure at the outset, including that they were free to discontinue with the interview, and indeed this research project, at any point, without explanation. Participants were reminded that the interview process may bring up painful or difficult memories, and as a result, were provided with contact information for the British Columbia Association of Clinical Counsellors. At all times, participants were treated with respect and compassion. Participants were advised that interviews were confidential, and that their responses would be held in anonymity by using a participant number. They were not referred to by name in the taped interviews or anywhere in the written research, including the interview transcript. Interviews were digitally recorded and transcribed, and the transcripts provided to the participants for comment and revision. It was desired that the process of interviewing and writing up the results be done in a collaborative manner, consisting of an iterative and interactive dialogue between the researcher and other participants throughout the research process, which was accomplished.

Interview Questions

1) What was the nature of the harassment you experienced?
2) In what legal arena(s) did you file your harassment claim?
3) Please explain what you found memorable in your experience of seeking resolution for the harassment you faced in your workplace. Would you characterize your experience of filing a harassment claim as generally

positive or negative, and why? Would you choose to file a claim against a harasser if this happened to you again in the future?

4) Did you search for information on your own about how to resolve your harassment complaint? **If yes**, how and where did you search? How accessible was the information?
5) Did you consult with anyone in the process of resolving your complaint? **If yes**, whom?
6) How satisfied were you, on a scale from 1 (least satisfied) to 10 (most satisfied), with the accessibility and accuracy of the information and/or support available to you while seeking resolution for harassment? What additional information would you have you liked?
7) Do you feel the information and assistance you received empowered you to make informed choices in the process of resolving your complaint? **If yes,** how? Was that, or would that have been, important to you?
8) Do you have anything to add that has not been addressed in previous questions?

Thank you for providing this invaluable contribution to this research study.

APPENDIX G

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL COMPLAINT PROCESS SUMMARY[1]

1. Access to Information about Complaints

Two Tribunal inquiry officers give callers basic information about human rights protection under the Code, the complaint process and other organisations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its website, at government agents' offices, the Human Rights Clinic and other organisations.

2. Complaint Filed

The first step in the complaint process is filing a complaint form.

3. Complaint Screened

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is *within the six month time limit*. If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it. If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the Code, the case manager will recommend to the Chair that the complaint be rejected. If it appears that the complaint was filed after the six month time limit, the case manager asks the parties whether it is in the public interest to accept the complaint and whether anyone would be substantially prejudiced by the delay in filing. A Tribunal member decides whether to accept the complaint.

4. Complaint Accepted and Served

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

5. Early Settlement Meeting

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

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[1] This summary is taken, verbatim, directly from the British Columbia Human Rights Tribunal 2007-2008 Annual Report (p. 36; emphasis added), with permission.

6. Response to Complaint Filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Application to Defer or Dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. *Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint.* Complaints may be dismissed for the reasons provided in section 27(1) of the Code.

8. Complaint Streamed

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

9. Settlement Meeting

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

10. Pre-Hearing Preparation

If the complaint does not settle, the parties must prepare for the hearing and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

11. Hearing

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. *The parties attend in person and the hearing is open to the public.* Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

12. Decision

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the *complainant has proven that discrimination occurred* and, if so, whether the respondent has a defence to the discrimination. *If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.*

APPENDIX H

A GUIDE TO LEGAL OPTIONS FOR REPORTING WORKPLACE HARASSMENT IN BRITISH COLUMBIA

Introductory Comments

Making this booklet available to women, although having positive implications, also presents at least two possible concerns. First, providing information about the process of addressing workplace gender harassment, which may be arduous and lengthy, may actually discourage women from reporting once they understand what is involved. Second, providing women with tools which might contribute to informing them could have negative consequences in the sense that the women are not necessarily acting as "victims" who need assistance (DuMont, Miller, & Myhr, 2003), but rather, are strong women exercising their rights. This may be problematic when these women are relying upon union representatives or other individuals who, as a result of paternalism, patriarchy, and the notion that women must be protected, expect the women to act in a particular manner. For instance Ferraro (2003, pp. 110-111) suggests that, with regard to battered woman syndrome, women who do not project the image of a "victim" that is consistent with traditional notions of femininity or who otherwise "fail to meet the standard of 'the syndrome' have ended up serving long prison sentences, have been unable to receive compensation for injuries they sustained, and have lost custody of their children." Being confronted with a strong woman who is taking her case into her own hands may be considered an affront to their authority by some of the individuals in a position to assist women who report harassment. Despite the aforementioned concerns, it is important to get this

information into the hands of women who are facing workplace harassment. Hyperlinks to the worldwide web are intentionally retained in this document so that the option exists to access the document electronically and link to the websites to which it refers.

A Word to Advocates

Employees who face sexual or gender harassment on the job can be found in any workplace, in nearly any country in the world (Harris & Firestone, 1997). Statistics show that upward of ninety percent of women indicate they have been sexually harassed (Martin, 1989, as cited in Harris and Firestone, p. 155). However, despite this astonishing number, most of those harassed choose not to report the harassment to a formal body (Aggarwal, 1992; Carr et al., 2004). Several reasons exist for this lack of reporting (Aggarwal, 1992; Carr et al.). For instance, the woman may not recognize that what she has experienced actually constitutes harassment, she may not know how or where to report the harassment or file a complaint, or she may be afraid that bringing the situation into the open may cause embarrassment or exacerbate her situation (Aggarwal, 1992; Carr et al.; Harris & Firestone).

Informing people of the processes they can expect to encounter if they choose to pursue one or more legal options in an attempt to seek resolution for workplace sexual harassment or gender discrimination may assist them with making a decision about whether to pursue a legal option. Furthermore, if women are able to make informed choices and are educated about the legal processes for seeking redress to sexual harassment claims, they may be in a position to exert greater authority over those processes by accessing options they did not previously know

were open to them, possibly leading to improved resolutions. In the least, women may simply be given information that will assist them in choosing not to expend resources, such as time, energy and money, on seeking redress through processes that are unlikely to produce results a person deems satisfactory for herself.

The enclosed booklet outlines measures an individual might take when reporting or filing a formal complaint of sexual harassment. Some legal options and advocates encourage those being harassed (targets) to confront their harasser(s) and ask them to stop the offending behaviour, or take other measures, prior to filing a formal complaint. Formally reporting harassment is often suggested to be an option of last resort. However, at least one group of researchers found that women were often reluctant to confront their harasser (Carr et al., 2004), and most workplace policies or collective agreements, although they may make the recommendation, do not compel a target to do so. Women should either be told if they are obligated to do so or encouraged to find out. If the individual who claims she is being harassed cannot be compelled to confront the harasser, and is not comfortable doing so, she should not. If a piece of legislation requires that a woman confront her harasser, it would be completely appropriate for her to register her reluctance or displeasure related to this requirement with the appropriate authority or support person.

Although a woman being harassed may consider an advocate's advice in the course of determining what, if anything, to do to address a harassment situation, women must make the choice for themselves about whether and how to proceed. Therefore, it may be beneficial for women to be informed about their potential

options prior to making a decision about how and whether to proceed, and for their advocates to thus also be aware of the issues associated with the potential legal avenues. This booklet is being disseminated to those providing representation, support and/or advocacy services to people seeking information about reporting sexual or gender harassment occurring in the workplace. The booklet provides information regarding the general legal options available to those reporting harassment, the intent of which is to aid women in making informed decisions about whether and how seek redress, in a legal forum, for workplace harassment. Contact information for the bodies most likely to be accessed is provided at the end of the booklet.

BOOKLET TEXT

Introduction

It has been reported that upward of 90% of women have faced sexual harassment within the workplace (Martin, 1989; as cited in Harris & Firestone 1997). Harassment can be costly for those experiencing it, emotionally, physically, and financially (Carr et al., 2004; Aggarwal & Gupta, 2006). If you are facing harassment in your workplace, you may not know how or where to seek information or assistance. Some women are not sure whether the behaviours to which they are being subjected actually amount to harassment, which is discussed in this booklet. People being harassed generally just want the harasser to stop. Unfortunately, reporting harassment has, upon occasion, been known to produce negative consequences, such as an escalation of the harassment, decreased support from co-workers, or even job loss (Aggarwal & Gupta; Carr et al.). This behaviour is

illegal, and there are sections in both the BC *Labour Relations Code* and the BC *Human Rights Code* protecting people from retaliation when they file a harassment or gender discrimination complaint. Unfortunately, legislation cannot guarantee protection in all cases. That said, reporting harassment *may* be a viable option for ending harassing behaviour. The information in this booklet is meant to prepare people for what they might expect in the process of filing a sexual harassment or gender discrimination complaint.

NOTE: ***The information contained in this booklet is meant to be informative only, and should in no way be substituted for legal advice.*** If you require legal advice or counsel, please consult a lawyer qualified in human rights matters or labour relations issues, or one of the resources listed in Section "F" at the end of this booklet.

A. INITIAL STEPS TO TAKE

1. **Document the situation** with dates, times, locations, parties involved, and a thorough description of what transpired (Aggarwal & Gupta, 2006).

2. **Only if you are comfortable doing so, ask or tell the harasser to stop,** and indicate that, or explain why, you find the behaviour to be harassing (Aggarwal & Gupta, 2006; Carr et al., 2004).

3. **Review the definitions of harassment and discrimination**, and associated procedures for seeking resolution. Note that many legal options have **time limits** for filing complaints, after which your complaint may not be entertained. Definitions of sexual and personal (which is harassment not motivated by grounds prohibited under human rights legislation, such as race or gender) harassment should be contained in your *workplace harassment and discrimination policy* (if your workplace has one, which not all workplaces do), which can be obtained from your human resources department, your workplace harassment and discrimination advisor, or your workplace website. Definitions of harassment and discrimination may also be contained in your *union collective agreement*, as will the **grievance procedure**, which you should review. With regard to human rights-related legislative options, no definitions of sexual harassment or gender discrimination are contained in the BC *Human Rights Code*, but Section 13 of the *Code* provides that discrimination in employment on the basis of gender is prohibited. Subsection 4 of Section 13, however, specifically indicates that prohibitions against discrimination "do not apply with respect to a refusal, limitation, specification

or preference based on a bona fide occupational requirement." This subsection may have relevance for women if the employer can demonstrate that there is a valid reason for permitting men to do something that women are not permitted to do in relation to employment, or for requiring women to do something that is more difficult for them to do than for men to do.

NOTE: *In order to constitute sexual harassment in the legal sense, behaviour need not necessarily be strictly sexual in nature, but can consist of behaviour that demeans or devalues you based on your gender.* Attempting to determine whether your situation meets a particular legal definition of harassment simply by looking at the definitions is difficult, as the definitions may be vague, and they are legal definitions. That means that, if you file a complaint, the person adjudicating your complaint is required to rely upon legal precedent (prior legal decisions) to determine whether what happened to you constitutes harassment in a legal sense. Therefore, even if you feel that what is happening to you does or does not constitute harassment according to a definition, the person or persons adjudicating your complaint, if you file one, may find otherwise. *Therefore, simply because the acts perpetrated against you do not appear to fit within a particular legal entity's definition of harassment does not mean that the behaviours are not harmful, or that your complaint will not necessarily be successful.*

4. Consider referring to the report written by Jacquie Carr, Audrey Huntley, Barbara MacQuarrie, and Sandy Welsh (2004), entitled "Workplace Harassment and Violence Report.[1] This report contains a wealth of helpful, detailed information regarding dealing with harassment in the workplace, and is easily accessible from the worldwide web. The text written by Aggarwal and Gupta (2006) is also a good resource, the title of which is listed in the references at the end of this booklet.

5. ***Decide whether you would be willing to participate in mediation.*** If you have decided that you may be prepared to file a formal complaint in accordance with your Harassment and Discrimination Policy, or a grievance with your union, think about whether you are willing to participate in mediation or conciliation with the person you feel harassed by. Some people are not comfortable with this option, but some are. If you are willing to consider mediation as a means of resolving your situation, some workplace policies and collective agreements not only allow you to do so, but encourage it, as does the BC Human Rights Tribunal. If you wish to enter into mediation, your union or your Harassment and Discrimination Policy Advisor should be able to provide you with further information and assist you with the process.

TIP 1 - If you eventually decide to file a complaint but are not comfortable participating in mediation, it is highly recommended that you register your concern with the resource person or representative, for two reasons. First,

[1] This report can be downloaded in PDF format from http://www.ontla.on.ca/library/Repository/monoth/4000/247055.pdf, and was accessed through the British Columbia Legislative Library catalogue at http://www.llbccat.leg.bc.ca/.

firmly indicating that you are not comfortable with participating in mediation may prevent you from being pressured to do so, allowing for alternative options to be explored. Second, reporting your concerns about the way the procedure works may lead to changes in the procedure for future complainants.

6. If the behaviour continues, **consider talking with your supervisor, human resources manager, or harassment policy advisor** (in accordance with your workplace harassment and discrimination policy, if your workplace has one), **a union representative or job steward**, or the British Columbia Labour Relations Board (in accordance with your collective agreement), **or an agent of the BC Human Rights Tribunal** with regard to gender discrimination complaints. Contact information is contained at the end of this booklet.

TIP 2 - **Prior to divulging ANY details about your situation** to any of the individuals listed above, ask them to explain the process that will be followed if a complaint is filed, and what type of resolution to expect. *Talking to someone to obtain information about the procedure for filing a complaint does* ***not*** *oblige you to file a formal complaint or proceed beyond the discussion.* ***Be certain you understand and are comfortable with the process before you proceed.*** Ask questions, including whether you will be permitted to withdraw your complaint or grievance at any stage in the process if you are not satisfied with how the process unfolds.

TIP 3 - Sometimes individuals who are in a position to assist are inexperienced or insensitive to the consequences of being harassed and the barriers to reporting and seeking redress for harassment. To ensure that you receive the best possible representation, read or find out as much as you can about the process and ask for help or clarification with anything you are not sure about.

B. FILING A COMPLAINT

TIP 4 - If at any time after you file a complaint you suffer repercussions because of it, speak with your resource person or representative immediately. Most harassment and discrimination policies and collective agreements contain clauses providing protection for those who have filed complaints. Protection is also provided by Section 43 of the BC *Human Rights Code* and Section 5 of the BC *Labour Relations Code*.

1. Determine by which method you would prefer to proceed with a complaint. The potential positive and negative aspects of filing a complaint with a particular body, and other information for alternative options, are outlined below. You may be able to file a complaint in more than one arena, but some legal bodies require that the complaint be held in abeyance (put on hold) until a decision is rendered in another arena, or may deny your complaint outright if it has been launched elsewhere. Representatives of the agencies listed at the end of this booklet should be able to tell you whether they will consider your complaint if you decide to file it simultaneously elsewhere. A complaint

may be filed in accordance with your workplace harassment and discrimination policy, your union's grievance process, and/or the BC Human Rights Tribunal or Canadian Human Rights Commission (depending on whether your workplace is federally- or provincially-regulated, which a representative of the BC Human Rights Tribunal can tell you). Federally-regulated workplaces are outlined in the *Canada Labour Code* and consist of federal departments, agencies and Crown corporations; chartered banks; airlines; television and radio stations; interprovincial communications and telephone companies; buses and railways that travel between provinces; First Nations, and; other federally regulated industries, such as certain mining operations. You may also be able to qualify for compensation from Canada Employment Insurance (sick leave) or WorkSafe BC (worker's compensation) if your situation meets the criteria required to qualify for those benefits.

Potential Positive and Negative Aspects Associated With Filing Complaints In Accordance with Particular Legal Options

NOTE: An individual's satisfaction with the complaint process and eventual decision may be affected by any number of factors, including but not limited to the experience of the support person or agent handling the complaint, the nature of the resolution you are seeking, how well you have documented your situation, the ability of you and/or your representative to articulate your case at the hearing, and the perceived credibility of witnesses.

a. Workplace Harassment and Discrimination Policy

Open to: All employees in workplaces covered by a harassment and discrimination policy

Positive: Inside the workplace; confidential; informal process; no cost to complainant

Negative: *Potential* inexperience of advisor may affect process and outcome; confidentiality may be breached; cost if using legal counsel

b. Union Grievance Procedure (Collective Agreement)

Open to: Unionized employees only

Positive: Inside the workplace unless and until proceeding to arbitration; relatively informal process; no cost to complainant, except in cases of Section 12 complaints, in which the complainant bears the cost of legal counsel if obtained[2]

Negative: Not necessarily required to be confidential; according to the BC Labour Relations Code, the union and employer are the only parties having authority to decide whether to proceed with a grievance, so although it may do so, a union is under no obligation to consider input from the grievor regarding whether and how to proceed; *potential* inexperience of union representative may affect

[2] From the practice guideline entitled "Duty of Fair Representation" on the BC Labour Relations Board's website.

process and outcome; the union is required to also represent the alleged harasser if that person is a union member, which may affect the process and outcome

Other: The decision *may* be focused toward rectifying systemic problems (such as discrimination, for instance) in the workplace rather than the individual grievor's specific situation.

c. Human Rights Complaint (BC Human Rights Tribunal or Canadian Human Rights Commission and Tribunal)

Open to: The BC Human Rights Tribunal and Canadian Human Rights Commission assist individuals who claim to have been subjected to discrimination. The options are open to all employees, although the complaint must be directed to the appropriate body in accordance with whether you are employed in a workplace that is provincially-regulated (most workplaces in British Columbia) (BC Human Rights Tribunal) or federally-regulated (defined in Section B (1) above) (Canadian Human Rights Commission). If you don't know if your workplace is regulated provincially or federally, contact the BC Human Rights Tribunal, contact information for which is at the end of this booklet.

Positive: As a result of the legal formality of the process, agents are likely to be experienced in dealing with complaints.

Negative: Outside the workplace (may be less convenient than internal options); the hearing and decision are generally public; relatively formal and complex process; cost of legal representation is borne by the complainant. Although complainants are not required to have legal representation at the hearing, statistical information contained in the 2007-2008 annual report of the BC Human Rights Tribunal indicates that the likelihood of the complaint being successful is enhanced when a complainant has legal representation.

Other: The decision *may* be geared toward the complainant's specific situation rather than rectifying systemic problems (such as discrimination, for instance) in the workplace.

Other Options for Seeking Resolution for Workplace Sexual Harassment or Gender Discrimination

In addition to the options outlined above, the options listed below may be open to some employees. Before proceeding, refer to "TIP 2" under point "6" of the heading "A. Initial Steps to Take," above. For further information, contact the agency directly (for Workers' Compensation and Employment Insurance) or a qualified labour relations, human rights, or criminal lawyer (for civil claims or possible criminal charges).

The Workers' Compensation Board of British Columbia
You may be entitled to benefits from your province's workplace health and safety insurance body if you become ill as a result of workplace harassment, which in British Columbia is WorkSafeBC (formerly the Workers' Compensation Board).

Canada Employment Insurance
If you become ill, feel obligated to quit your job, or are fired as a result of harassing behaviour, you may be entitled to federal Employment Insurance benefits.

Civil claim (lawsuit) in court
This option is more likely to be accessed by non-unionized employees than unionized employees. Unionized employees generally are not permitted access to the courts except with regard to judicial review of tribunal decisions. The reason for this is that the *Labour Relations Code* and Labour Relations Board of British Columbia has strict jurisdiction over matters arising from the collective agreements of unionized employees. Workplace harassment would generally fall within the jurisdiction of the Labour Relations Board.

Pressing criminal charges
This option is open to those who have been sexually assaulted or who are subject to criminal stalking.

Time Limits for Filing Complaints

There are **time limits** for filing complaints and other related documentation with most of these processes, to which strict attention must be paid, or the complaint may be denied. Information regarding time limits can be obtained from the pertinent resource person associated with each option noted in the "Contact Information" section of this booklet, or by consulting your workplace harassment and discrimination policy or collective agreement grievance procedures. Information regarding the BC Human Rights Tribunal's timelines can be accessed in "Information Sheet No. 4" at http://www.bchrt.bc.ca/guides_and_information_sheets/default.htm.

Methods for Filing Complaints

a. Workplace Harassment and Discrimination Policy
Before proceeding, refer to "TIP 2" under point "6" of the heading "A. Initial Steps to Take," above. If your workplace has a harassment and discrimination policy, review your policy's procedures for filing a complaint. Consult with the harassment advisor, your supervisor, or the Human Resources Manager, whomever your policy requires that the complaint be directed.

b. Union Grievance Procedure (Collective Agreement)
Before proceeding, refer to "TIP 2" under point "6" of the heading "A. Initial Steps to Take," above, and the "TIPS" under the "Union Grievance Procedure" heading outlined in Section C, "Complaint Hearing Processes,"

below. Review the grievance procedures outlined in your collective agreement. Consult with the job steward, union representative, your supervisor, or whomever your collective agreement's grievance procedure requires the first stage of the complaint be directed.

c. Human Rights Complaint (BC Human Rights Tribunal or Canadian Human Rights Commission)

BC Human Rights Tribunal (employees in provincially-regulated workplaces):
Before proceeding, refer to "TIP 2" under point "6" of the heading "A. Initial Steps to Take," above. Review the Tribunal's procedures for filing a complaint of harassment (see "Guide 2"), at http://www.bchrt.bc.ca/guides_and_information_sheets/default.htm. The form for filing a complaint is "Form 1," which can be accessed, as can a sample completed form, at http://www.bchrt.bc.ca/forms/default.htm. Consult with the resource person at the Tribunal, who can be reached toll free in British Columbia at 1-888-440-8844.

Canadian Human Rights Commission and Tribunal (employees in federally-regulated workplaces):
Before proceeding, refer to "TIP 2" under point "6" of the heading "A. Initial Steps to Take," above. Review the Commission's procedures for resolving disputes, at http://www.chrc-ccdp.ca/disputeresolution_reglementdifferends/drp_prd-en.asp#3. The forms for filing a complaint are sent to the potential complainant after consultation with a resource person at the Commission, who can be reached toll free at 1-888-214-1090. If complaints of discrimination cannot be resolved prior to the hearing stage, they are referred to the Canadian Human Rights Tribunal for hearing.

C. COMPLAINT HEARING PROCESSES

a. Workplace Harassment and Discrimination Policy
The hearing is typically confidential (open only to the involved parties and required witnesses), but confidentiality cannot be guaranteed. The process for hearing complaints is normally outlined in a workplace's policy. If it is not, ask the advisor, your supervisor, or the Human Resources manager what to expect at the hearing.

b. Union Grievance Procedure (Collective Agreement)
The hearing process is generally confidential, but confidentiality cannot be guaranteed. The first stage or step of a grievance procedure often allows for the affected employee to speak to her immediate supervisor. Grievance procedures are normally referred to as "stages" or "steps," and there are typically 3 or 4 steps. With each progressive step in the grievance process, a

decision-maker with greater authority is involved. The final stage in the grievance process is arbitration, which means that the facts of the grievance will be heard by either a single arbitrator or an arbitration board, depending on the particular collective agreement and the union's approach. The decision of the arbitrator is final and binding on the parties to the grievance (the union and the employer) and on the grievor, although there are some options for appealing decisions with the BC Labour Relations Board. Tips for successfully dealing with union grievance processes are provided below.

TIPS regarding union grievance hearing procedures:

- Before proceeding, refer to "TIP 2" under point "6" of the heading "A. Initial Steps to Take," above. Information regarding grievance procedures in collective agreements is often limited, so you should seek further information regarding the process from your union representative and/or a trusted friend or co-worker[3] who has gone through the grievance process. If you are aware of someone who has been through the grievance procedure, ask if they are willing to discuss their experience with you, keeping in mind that they may be required to maintain confidentiality. Those who have been through the process are often great sources of information about the process and what to expect.
- Beyond the first stage of the grievance process, it is normally at the discretion of the union as to whether or not to proceed. It is *always* the sole authority of the union to refer a grievance to arbitration.
- Before attending grievance hearing meetings, **ask your union representative to remain with you at all times**. You are likely to be uncomfortable if left in a room, without support, with the person who has harassed you.
- Sometimes union representatives are inexperienced. If you are an employee in a provincially-regulated workplace, and are not satisfied with the information you receive from your union, you may contact the Information Officer at the BC Labour Relations Board for clarification. In accordance with Section 12 ("Duty of Fair Representation") of the BC *Labour Relations Code* or Section 37 of the *Canada Labour Code*, your union has a duty to represent you in a manner that is not "arbitrary, discriminatory or in bad faith." If you feel that your union has acted in contravention of Section 12, you are first normally required to exhaust any internal union appeal procedures, and after that, may file a complaint with the BC Labour Relations Tribunal, by completing the form entitled "Duty of Fair Representation Complaint," which is accessible at http://www.lrb.bc.ca/forms/. Further information about the duty of fair representation, and what to expect in terms of procedures if you file a complaint, can be found at the British Columbia Labour Relations Board

[3] Carr et al. (2004, p. 94) stress the importance of "exercising caution if/when confiding in coworkers," as they may turn on you once a complaint is filed, possibly as a result of fear of reprisal from the harasser or employer for providing support.

website at http://www.lrb.bc.ca/. Once you access the website, the menu on the left contains a section entitled "Information Bulletins," from where the information bulletin entitled "Section 12 Guide" can be downloaded. ***Please note, however, that decisions related to Section 12 complaints are overwhelmingly in favour of the union.*** With regard to Section 37 of the *Canada Labour Code*, the complaint form may be found on the website of the Canada Industrial Relations Board at http://www.cirb-ccri.gc.ca/publications/forms-formulaires_eng.asp. If you choose to file a complaint with either the BC Labour Relations Tribunal or the Canada Industrial Relations Board and wish to have legal representation, you will likely be required to pay your own legal costs. Unless application is made and approved to have a hearing held in confidence, hearings with the BC Labour Relations Board are open to the public.

- If you are an employee in a provincially-regulated workplace and feel that your union has discriminated against you in the process of dealing with your grievance, you may also seek resolution in accordance with Section 14 ("Discrimination by unions and associations") of the BC Human Rights Code. If you are a unionized employee in a federally-regulated workplace (defined in Section B (1) above), please consult the Canada Labour Code, Part III, Complaints Handling, information regarding which may be found at the following web location: http://www.hrsdc.gc.ca/eng/lp/lo/opd-ipg/opd/700-10.shtml#environment.

c. Human Rights Complaint (BC Human Rights Tribunal or Canadian Human Rights Commission)

i. BC Human Rights Tribunal

Unless application is made and approved to have a hearing held in confidence, hearings with the Human Rights Tribunal are open to the public. Guide 5 ("Getting Ready for a Hearing") and Information Sheet No. 7 ("Standard Stream Process — Complainants) outline the procedures the Tribunal uses for hearing complaints, and are available on the BC Human Rights Tribunal website at http://www.bchrt.bc.ca/guides_and_information_sheets/default.htm. Guide 4 ("The Settlement Meeting") outlines the procedures for settling a complaint prior to a formal hearing.

ii. Canadian Human Rights Commission

For information regarding hearing procedures with the Canadian Human Rights Commission, please contact the Commission directly, contact information for which is contained in Section "F" at the end of this booklet.

D. THE DECISION

Below are the Sections in the respective pieces of legislation relating to the decisions that may be rendered in provincially-regulated workplaces, in accordance with a collective agreement (governed by the *British Columbia Labour Relations Code* and Board) or a human rights complaint (governed by the British Columbia *Human Rights Code* and Tribunal). If you are in a federally-regulated workplace, please consult with the Canada Industrial Relations Board (grievance) or the Canadian Human Rights Commission (human rights complaint) for details regarding decisions that may be rendered by these bodies. With regard to workplace harassment and discrimination policies, please consult your policy or resource person for information about the range of decisions that may be rendered.

a. Union Grievance Procedure (Collective Agreement)

Some labour arbitration decisions are contained on the Labour Relations Board's website at http://www.lrb.bc.ca/decisions/. The website also has a database of decisions that can be searched. Please note, however, that the decisions contained on the Board's website do not include all labour arbitration decisions rendered in British Columbia, as decisions made by an arbitration board constituted in accordance with a collective agreement are not necessarily published by the Board.

Section 89 of the British Columbia *Labour Relations Code* (1996) states that:

> For the purposes set out in section 82, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limitation, may
>
> (a) make an order setting the monetary value of an injury or loss suffered by an employer, trade union or other person as a result of a contravention of a collective agreement, and directing a person to pay a person all or part of the amount of that monetary value,
> (b) order an employer to reinstate an employee dismissed in contravention of a collective agreement,
> (c) order an employer or trade union to rescind and rectify a disciplinary action that was taken in respect of an employee and that was imposed in contravention of a collective agreement,
> (d) determine that a dismissal or discipline is excessive in all circumstances of the case and substitute other measures that appear just and equitable,
> (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement,
> (f) dismiss or reject an application or grievance or refuse to settle a difference, if in the arbitration board's opinion, there has been

unreasonable delay by the person bringing the application or grievance or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference,

(g) interpret and apply any Act intended to regulate the employment relationship of the persons bound by a collective agreement, even though the Act's provisions conflict with the terms of the collective agreement, and

(h) encourage settlement of the dispute and, with the agreement of the parties, the arbitration board may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

b. Human Rights Complaint (BC Human Rights Tribunal)

Section 37(2) of the British Columbia Human Rights Code (1996) sets out remedies for successful complaints, as follows:

(2) If the member or panel determines that the complaint is justified, the member or panel

(a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,

(b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Code,

(c) may order the person that contravened this Code to do one or both of the following:

(i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;

(ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and

(d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;

(ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

(iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

E. AFTER THE DECISION

The *Administrative Tribunals Act* (2004) of British Columbia governs the Labour Relations Tribunal and the Human Rights Tribunal in British Columbia. Thus, if you are not satisfied with the decision resulting from a complaint made to either of these bodies, you may be able to appeal the decision as enabled by the BC *Administrative Tribunals Act*. Under certain circumstances, you may also apply to have the decision reviewed by the Supreme Court of British Columbia. This is called "judicial review," and is enabled by the *Judicial Review Procedure Act* (1996) of British Columbia. These pieces of legislation can be accessed at the following website links:

Administrative Tribunals Act:
http://www.qp.gov.bc.ca/statreg/stat/A/04045_01.htm

Judicial Review Procedure Act:
http://www.qp.gov.bc.ca/statreg/stat/j/96241_01.htm

Further information regarding either of these procedures may be obtained by contacting the BC Labour Relations Board or the BC Human Rights Tribunal.

F. CONTACT INFORMATION AND LINKS

1. Labour Relations Board of British Columbia and British Columbia Labour Relations Code

Suite 600, Oceanic Plaza
1066 West Hastings Street
Vancouver, British Columbia
V6E 3X1
Telephone: 604-660-1304 (Information Officer)
604-660-1300 (for information regarding active or pending cases)
Toll-free: Call Enquiry BC toll-free at 1-800-663-7867 and ask them to connect you to the Labour Relations Board.
Fax: 604-660-1892
E-mail: Information@lrb.bc.ca (the Board's Information Officer)
Web: http://www.lrb.bc.ca/

BC Labour Relations Code website:
http://www.bclaws.ca/Recon/document/freeside/--%20l%20--/labour%20relations%20code%20%20rsbc%201996%20%20c.%20244/00_96244_01.xml

2. Canada Industrial Relations Board and Canada Labour Code

Western Region
Suite 501

300 West Georgia Street
Vancouver, British Columbia
V6B 6B4
Telephone: 604-666-8220
Toll-free: 1-800-575-9696
TTY: 1-800-267-6511
Fax: 604-666-6071
E-mail: info@cirb-ccri.gc.ca
Web: http://www.cirb-ccri.gc.ca/contact_eng.asp

Canada Labour Code website: http://laws.justice.gc.ca/en/L-2/

3. British Columbia Human Rights Tribunal and Human Rights Code

1170 - 605 Robson Street
Vancouver, British Columbia
V6B 5J3
Telephone: 604-775-2000
Toll-free: 1-888-440-8844 (in B.C.)
Fax: 604-775-2020
TTY: 604-775-2021
E-mail: BCHumanRightsTribunal@gov.bc.ca
Web: http://www.bchrt.bc.ca/

British Columbia *Human Rights Code* (1996) website:
http://www.bclaws.ca/Recon/document/freeside/--%20H%20--/Human%20Rights%20Code%20%20RSBC%201996%20%20c.%20210/00_96210_01.xml

4. Canadian Human Rights Commission and Tribunal, and the Canadian Human Rights Act

a. Canadian Human Rights Commission

344 Slater Street, 8th Floor
Ottawa, Ontario
K1A 1E1
Telephone: (613) 995-1151
Toll-free: 1-888-214-1090
TTY: 1-888-643-3304
Fax: 613-996-9661
Web: http://www.chrc-ccdp.ca/default-en.asp

b. Canadian Human Rights Tribunal

160 Elgin Street, 11th Floor
Ottawa, Ontario
K1A 1J4
Telephone: 613-995-1707
TTY: 613-947-1070

Fax: 613-995-3484
E-mail: registrar@chrt-tcdp.gc.ca
Web: http://www.chrt-tcdp.gc.ca/index_e.asp

Canadian Human Rights Act website:
http://laws.justice.gc.ca/en/H-6/index.html

5. WorkSafeBC (Workers' Compensation Board of British Columbia)

As contact information is broken out by region and area of concern, it is highly recommended that the website be consulted for specific contact information required:

Claims Call Centre Contact Information:
PO Box 4700 Stn Terminal
Vancouver, British Columbia
V6B 1J1
Telephone: 604-231-8888
Toll-free: 1-888-967-5377
Fax: 604-233-9777
Toll-free: 1-888-922-8807
Web: http://www.worksafebc.com/contact_us/default.asp

6. Service Canada (Employment Insurance information)

General information can be obtained as follows:
Telephone (Toll-free): 1-800-206-7218
TTY: 1-800-529-3742
Web: http://142.236.54.114/en/ei/menu/eihome.shtml

Benefits may be applied for online at the following web link:
http://www100.hrdc-drhc.gc.ca/ae-ei/dem-app/english/home2.html

You may also apply for benefits in person at your nearest Service Canada Centre. A list of Centres is available at the following web link:
http://www1.servicecanada.gc.ca/en/gateways/where_you_live/menu.shtml

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