

Sexual Harassment in School

*Your Rights and
Responsibilities*

by the
**Alberta Civil
Liberties
Research
Centre**



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SCHOOL**

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**Mailing Address:
c/o Faculty of Law
University of Calgary
2500 University Drive N.W.
Calgary, Alberta T2N 1N4
(403) 220-2505
Fax (403) 284-0945
E-mail: aclrc@ucalgary.ca**

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Board of Directors of the Alberta Civil Liberties Research Centre

Edwin W. Webking, Chairperson; Janet Keeping, Treasurer (Interim); Doreen Barrie; Richard Bennett; Michael Greene; and Michael Wylie.

Principal Researcher and Writer

Suzanne Vickers, B.Ed., LL.B., Human Rights Educator.

Legal Editor

Linda McKay-Panos, B.Ed., LL.B., Executive Director (Acting).

Project Management

Francie Frank, B.A., Cert. Ed., Administrator.

Linda McKay-Panos, B.Ed., LL.B., Executive Director (Acting).

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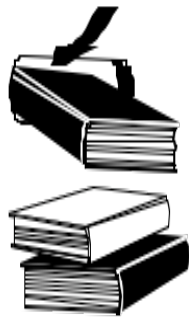
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FOREWORD

What can you do if you are being sexually harassed? What are your rights and remedies? This guidebook, *Sexual Harassment in School: Your Rights and Responsibilities*, will help you understand what sexual harassment is and what you can do about it.

This guidebook sets out basic information about sexual harassment and the relevant laws. It is intended for students and educators. It includes information on the following topics:

- statistics on sexual harassment in the schools;
- definitions of sexual harassment;
- types of sexual harassment;
- forms of sexual harassment;
- sexual assault;
- effects of sexual harassment;
- school board policies and procedures;
- legal aspects of sexual harassment;
- the Alberta Human Rights and Citizenship Commission;
- civil and criminal courts; and
- sexual harassment law in the United States.

At the end of this guidebook you will find a glossary. It provides definitions of underlined terms that appear in the guidebook. The appendix includes a list of useful addresses and phone numbers.

We have also produced a teacher's manual which provides background information on sexual harassment and suggested teaching activities.

We are grateful to the many individuals who assisted in the preparation of this guidebook.

Suzanne Vickers
Human Rights Educator
Alberta Civil Liberties Research Centre
May, 1997

I. INTRODUCTION

Sexual harassment is a serious problem in schools, as well as in the workplace. Sexual harassment can be a daily reality for students. It can happen in the hallways, on the school bus, in the gym and in the classroom. Both male and female students can be harassed. Because the vast majority of reported legal decisions involves male harassers and female victims, most of the examples in this book refer to the harasser as a male. This does not mean that boys are not sexually harassed nor does it mean that girls do not sexually harass other people. Sexual harassment is against the law. It is a form of discrimination and is illegal in Canada.

Sexual harassment is not new. June Larkin, in *High School Girls Speak Out*, points out that as early as 1911, the National Women's Trade Union League complained about verbal abuse from men in their jobs.¹ At that time there was no label for this type of behaviour and it was often thought to happen because men and women worked together. It was not until 1974 that the name sexual harassment was introduced by Lin Farley.² Lin used the name to describe unwanted sexual attention by males to females in the workplace. She was the first person to examine the psychological, legal and economic consequences of sexual harassment in the workplace.³

Sexual harassment in the workplace is now recognized as a serious issue. Once considered to be an inevitable part of a woman's job, it has now been labeled by society and the law as unacceptable behaviour.⁴ Employers are beginning to recognize the importance of putting rules in place that address sexual harassment and establish penalties.

Sexual harassment in the schools has only recently been acknowledged as a significant problem. Many schools now have policies which contain rules about sexual harassment and are currently educating teachers, students and administrators about the issue.⁵

II. STATISTICS ON SEXUAL HARASSMENT IN SCHOOLS



A. Ontario Survey

According to a survey of 350 high schools in Ontario, conducted by the Ontario government and the Ontario Secondary School Teachers' Federation,⁶ by the time girls reach high school 80 percent report that they have been sexually harassed in a school setting. Of those high-school girls who report having been harassed, 80 percent have been subjected to unwanted sexual comments or gestures, 80 percent have been touched, grabbed or pinched in a sexual way and almost 50 percent have had nasty sexual rumours spread about them.

B. American Association of University Women Survey

Similar studies have been conducted in the United States. In 1993, the American Association of University Women (AAUW)⁷ conducted a survey on sexual harassment in the schools. The survey was completed by 79 public schools across America.⁸ The results of the survey were alarming to many people as it revealed that 4 out of 5 students (80 percent) reported that they had been the target of some form of sexual harassment during their school lives.⁹

According to this survey, most students first experience sexual harassment in the junior high years. However, in some cases students reported experiencing their first incident as early as grade three. The survey showed that the level of harassment of boys is surprisingly high. However, the study showed that boys tended to take sexual harassment less seriously than girls. Whereas only 24

percent of the boys became "very upset" or "somewhat upset" by their experiences, 70 percent of the girls felt this way.¹⁰

III. WHAT IS SEXUAL HARASSMENT?

While definitions of sexual harassment vary, most include similar essential elements. Although the following definitions refer to sexual harassment in employment, with a few small changes they apply to schools too.

Definition of Sexual Harassment provided by the Supreme Court of Canada

...sexual harassment in the workplace may broadly be defined as any **unwelcome** conduct of a **sexual** nature that detrimentally affects the work environment or leads to adverse job-related consequences.¹¹

Definition provided by the Alberta Human Rights and Citizenship Commission

Any **unwelcome** behaviour, **sexual** in nature that adversely affects, or threatens to affect, directly or indirectly, a person's job security, working conditions, or prospects for promotion or earnings; or prevents a person from getting a job, living accommodations, or any kind of public service.

Definition of Sexual Harassment provided by the Calgary Board of Education

Any **unwelcome** behaviour that is **sexual** in nature. Such behaviour may directly or indirectly affect or threaten to affect in an adverse manner a person's job security, prospects or promotion, or earnings and working conditions.¹²

What does the term "unwelcome behaviour" mean?

The term "unwelcome" means that the person did not ask for the behaviour, nor did the person respond with similar type behaviour.

What does the expression "behaviour of a sexual nature" mean?

"Behaviour of a sexual nature" includes any conduct that refers to sex.

Sexual harassment may involve remarks, gestures or actions that are sexual in nature. It may include but is not limited to:

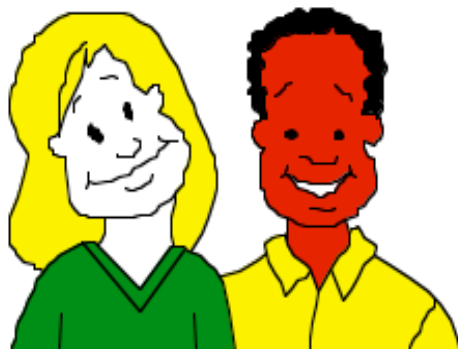
- unwanted physical contact;
- unwelcome remarks;
- verbal abuse or display of suggestive pictures;
- leering, whistling, jokes or other behaviours or gestures of a sexual nature;
- demands for sexual favours;¹³
- names written on walls or desks; and
- stalking.¹⁴

What some girls had to say:

I was sitting in class and the guys behind me kept flipping my skirt. When I turned around to tell them to stop the teacher yelled at me. I tried to tell her what they were doing but she told me to be quiet and stop interrupting the class.¹⁵

A lot of girls won't walk down school hallways 'cause they know guys will be there grabbing their arms or saying, 'Oh, come here baby.' Most girls won't walk down a particular hallway because of the gestures.¹⁶

This one teacher always says horrible things about women. He doesn't think women can do anything.¹⁷



A. What is the Difference Between Sexual Harassment and Flirting, Complimenting or Joking?

Flirting is very different from sexual harassment. If the other person feels the same way then a mutual attraction exists. Flirting feels good: sexual harassment does not. For example, some people may consider, "Hey babe" to be a flirtatious comment while others may see it as sexual harassment. Flirting and joking are two-sided, and are usually enjoyable for both people. Sexual harassment is not enjoyable—it is bullying. Sexual harassment may adversely affect the victim.

The deciding factor may be the feelings of the individual who receives the behaviour. If the recipient is not offended by the behaviour then it is not sexual harassment.¹⁸ On the other hand when something affects the person, (for example, if the person feels offended and upset) then it may be sexual harassment.

Sexual harassment is **not**:

- a hug between friends;
- mutual flirtation; or
- sincere and personal compliments.¹⁹

Susan Strauss, in her book *Sexual Harassment and Teens*, suggests asking yourself some questions to help you decide whether or not the behaviour is sexual harassment.²⁰

1. Is this something I would want my father, mother, boyfriend, girlfriend, sister, brother, wife or husband to hear?
2. Is this something I would do or say if the person's wife, husband, boyfriend or girlfriend were present?
3. Would I want to hear my comments or see my behaviour on TV or in the newspaper so my family and friends would hear about them?
4. Is there a difference in power between me and the other person? For example, am I that person's employer or teacher?
5. Is this something I would want someone else to say to my mother or father, girlfriend or boyfriend, sister or brother?

Warning Signals²¹

Why doesn't anyone help me?

I wish I could make it stop.

I hate you for doing this.

I can't believe this is happening to me.

What's going to happen next?

Why me? What did I do?

FEELINGS & REACTIONS

Associated with Sexual Harassment and Flirting

HARASSMENT

Feels Bad
One-sided
Feels Unattractive
Degrading
Powerless
Power Based
Negative Touching
Unwanted
Invading
Demeaning
Sad/Angry
Negative Self-Esteem

FLIRTING

Feels Good
Reciprocal
Feels Attractive
Compliment
In Control
Equitable
Positive Touching
Wanted
Open
Flattering
Happy
Positive Self Esteem

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B. One-sided and Unwelcome

Feelings of romance are feelings experienced by two people. The key to sexual harassment is that it is one-sided and unwelcome. When people insist that you accept their sexual attention, they are sexually harassing you. The law considers their behaviour to be inappropriate and wrong.

IV. TYPES OF SEXUAL HARASSMENT

Sexual harassment can be broken into three categories: verbal, physical and non-verbal. Whether or not the behaviour constitutes sexual harassment may depend on the reaction of the victim. The law is concerned with the impact of the behaviour, not the intent of the behaviour.²²

A. Verbal Harassment

Verbal harassment includes any hurtful or insulting words directed at someone because of her/his sex. For example certain nicknames like "stud," "babe," "chick", or "sexy" **may** be demeaning. Insulting remarks directed at someone because of his/her gender or race can also make up sexual harassment. Rude jokes of a suggestive nature could be offensive. Whistling may be considered to be a form of verbal harassment.²³ Comments about one's appearance may not always be sexual harassment. It depends on what the comment means to the person on the receiving end of the remark.

Below is an illustration of a type of verbal harassment. June Larkin states "rating" is a common practice in many schools.

Example:

*On the first floor hallway I was sitting on the bench, talking with friends. Suddenly one of the guys jumps up and runs down the hallway. When he returns he has construction paper with large black numbers written all over them from one to ten. So the guys went on with their sick way of having fun by rating girls as they passed by in the hallway. I told one guy that he was sexist and by rating young women as they passed by in the hallway he was making them feel very self-conscious and very uncomfortable. I told him he was rude. He said, 'Just for saying that, I give you a zero.'*²⁴

B. Physical Harassment

Physical harassment is any unwelcome physical contact. It may include (but is not limited to) touching, grabbing or pinching in a sexual way. Sexual harassment may turn into sexual assault which is a criminal offence. However, the point at which it becomes sexual assault is not always clear. Sexual assault may include physical violence or threatening acts or gestures which make a person fear for his or her safety.²⁵ Sexual harassment is much broader than sexual assault and does not always include physical contact or threatening acts. Sexual assault is covered by criminal law and a complaint needs to be made to the police.²⁶

Example:

*I will be standing at my locker and someone will come up and start rubbing against me or the guys will walk out and they try to touch your chest.*²⁷

C. Non-Verbal Harassment

Non-verbal (without words) harassment may include leering (staring), or sexual gesturing (movements). It may also include unwelcome exposure to material that is sexually suggestive such as pornographic photos, jokes, drawings or graffiti.²⁸

Example:

*...it happens while you are walking down the street, when you are in the hallway...maybe not every day, but every other day. They look at you from head to toe and ...stay very close to you.*²⁹

D. Legal Classification of Sexual Harassment

Legal cases have recognized two types of sexual harassment: *Quid Pro Quo* and poisoned work (or educational) environment.

1. *Quid Pro Quo* (something for something)

This is the easiest type of sexual harassment to recognize. It occurs when sexual demands are made upon a person in exchange for something. For example, a teacher may demand sexual favours in exchange for a good mark. In a workplace setting, sexual demands may be made upon an employee in exchange for a promotion or job advancement. Even if it only occurs once, it is considered to be sexual harassment. An employee or a student is forced to make a choice between giving in to the sexual demands or losing the school or employment benefit.

Example:

Your teacher wants you to stay late for extra help even though you understand the lesson well. The teacher says that he wants to spend more time getting to know you. He also flatters you by telling you how attractive you are. Maybe you do need extra help but your teacher

makes it clear that you'll need to do more than study with him to pass the course.

Adapted from Elizabeth Bouchard, *Everything You Need to Know About Sexual Harassment*, (New York, The Rosen Publishing Group 1994).



2. Poisoned Educational (Work) Environment

This type of sexual harassment can be more confusing than the *quid pro quo* type of harassment. This type of harassment is less obvious and occurs over a long period of time. It creates an offensive, intimidating work or educational environment. A poisoned environment occurs when there is unequal treatment for one person or groups of persons. The environment must become unpleasant or unbearable because of a pattern of sexual harassment.³⁰ It does not matter whether the harasser is someone in a position of authority.

Examples:

1. *A student draws rude, sexual cartoons in the washrooms. The cartoons have your name written underneath them. You feel humiliated and embarrassed. Although you have complained to the principal the graffiti has remained on the wall. The presence of these*

cartoons creates a poisoned environment for you and others using the washroom.

2. A group of male students stand in a hallway rating girls. They also whistle and make rude comments about the girls as they pass by. The girls feel humiliated and are too uncomfortable to walk down the hallway. The actions are harassing. This is a case of poisoned environment.

Adapted from *The Joke's Over—Student to Student Sexual Harassment in Secondary Schools* (1995)

V. OTHER FORMS OF SEXUAL HARASSMENT

Although the focus of this guidebook is on student-to-student sexual harassment, there are other forms of sexual harassment and related harassment. The following sections will briefly discuss teacher-to-student sexual harassment, sexual harassment of males, sexual harassment of teachers, sexual harassment in the workplace and harassment of gay, lesbian and bisexual students.

A. Teacher-to-Student Sexual Harassment

Sexual harassment of students by teachers is taken seriously. The relationship between students and teachers is a special one because teachers are in a position of power. Teachers are under a legal and professional responsibility to keep all relationships with students totally professional. Sexual harassment of students by teachers takes all the same forms discussed in the above section.

Sexual harassment may be grounds for dismissal from a teaching job. For example if a teacher was aware that his or her jokes were of a sexual nature and failed to stop the behaviour after a warning, that individual may lose his or her job.³¹ Several incidents of sexual harassment may be "just cause" for firing a teacher from his/her job.³²

Often if a school employee is involved with sexual misconduct that person will face criminal charges. Not only will a school employee lose his or her job, but he or she may be charged in criminal court. Any sexual conduct between a teacher and a student is unacceptable behaviour and should be reported immediately.



B. Sexual Harassment of Males

Studies indicate that most victims of sexual harassment are girls. However, boys may be the victims of sexual harassment at school. In the American Association of University Women's study of sexual harassment in the schools, 76% of males reported that they had been sexually harassed.³³ This figure is not too far off the figure for females. However, the gap widens when we look at how often this happens. Girls reported experiencing sexual harassment more frequently.³⁴

According to the boys surveyed in the AAUW survey the most common type of sexual harassment experienced by boys included being the target of sexual comments, jokes, gestures or looks.³⁵ Twice as many boys as girls reported being called gay.³⁶ Boys indicated that being called gay was the worse kind of harassment. Equal numbers of boys and girls reported being exposed to sexual pictures, photographs, illustrations, messages or notes. Boys were more likely to be harassed in the locker room and rest room.³⁷

According to the AAUW survey, boys were less likely than female students to report harassing behaviour.³⁸ Many boys did not report sexually harassing behaviour because of peer pressure. They were afraid that friends would ridicule and tease them.³⁹

C. Student-to-Teacher Sexual Harassment

On some occasions teachers are the recipients of sexually harassing behaviour and students are the harassers. In most cases, the victim is a female teacher.⁴⁰ Male high school students may be physically larger than their female teachers and thus may be frightening to a teacher. This physical intimidation can be a significant factor in student-to-teacher sexual harassment. We are unaware of any studies that have examined student-to-teacher sexual harassment. Therefore, it is unclear how often this type of harassment occurs.

D. Sexual Harassment in the Workplace



Numerous studies have been conducted concerning sexual harassment in the workplace, and they have produced similar results. In 1993, Statistics Canada studied violence against women. Six percent of the 12,000 women interviewed indicated that they had suffered at least one incident of sexual harassment during the 12 months before the survey.⁴¹

Sexual harassment in the workplace is not limited to any one group of workers or any particular type of job.⁴² It can occur in an office setting or a factory setting. The harassers may be supervisors, co-workers, clients or customers.⁴³ Although there are some reported cases of men being harassed, the majority of cases involve women.⁴⁴

Students may experience sexual harassment in summer or after school jobs. June Larkin in her book, *High School Girls Speak Out*, points out that being harassed at work is a common problem for students.⁴⁵ Students may be more vulnerable to sexual harassment as they are young and inexperienced. Co-workers and bosses are often older and are in positions of power.

VI. HARASSMENT OF GAY, LESBIAN AND BISEXUAL STUDENTS

Several studies indicate that students who are gay, lesbian or bisexual face tremendous rejection as they grow up.⁴⁶ Many students become aware of their sexual orientation during adolescence and may have difficulty coping. Suicide among gay and lesbian teens is at a higher level than for the general teen population. Gay and lesbian teens account for up to 30% of all teen suicides.⁴⁷

Research has shown that schools can be an unwelcoming and dangerous place for adolescent homosexuals.⁴⁸ In the school environment homophobic name calling happens often. Homophobia is when someone feels hatred, prejudice or fear towards a gay, lesbian or bisexual person. For students who are experiencing homosexual feelings, the name calling can be devastating. For students who are not gay, such name calling may encourage hostility towards the gay and lesbian population.

Some harassment policies do mention harassment based on sexual orientation. For example the Rocky View School Division includes it under "Other personal harassment". The policy reads as follows:

Other personal harassment can be, but is not limited to:

unwanted actions, derogatory or demeaning posters, cartoons, graffiti, drawings, innuendoes or taunting about or motivated by a person's age, religion, creed, language, marital status, family status, pregnancy/childbirth, **sexual orientation**, disability/handicap, political belief or any other prohibited ground of discrimination.

Rocky View School Division No. 41,
Harassment Policy Information Guide

VII. SEXUAL ASSAULT

Sexual harassment is not a Criminal Code offence but sexual assault⁴⁹ is. The Criminal Code of Canada defines sexual assault as any unwanted sexual act done by one person to another.⁵⁰ If you feel frightened for your safety or are pushed into more sexual activity than you want, you may have been sexually assaulted.⁵¹

It is difficult to tell when sexual harassment becomes sexual assault. This is because sexual assault and sexual harassment are similar in some ways.

Both sexual assault and harassment are ways that people:

- force sexual attention on someone who doesn't want it;
- dominate others by unfairly taking advantage of a situation;
- scare others into consenting; or
- violate someone's rights.⁵²

Sexual assault goes further than sexual harassment as it involves physically hurting or threatening the person. However, both assault and harassment emotionally hurt the person and make them feel badly. Power is a big part of assault and harassment, and people who are assaulted or harassed say that they feel weak, helpless and humiliated.⁵³

If you think that you have been sexually assaulted, then it should be reported to the police. If the police conclude that there are reasonable and probable grounds to determine that an assault has taken place, then they will lay a charge. A charge is a legal written accusation of wrongdoing against someone. The police cannot generally lay charges for sexual harassment only.

When a court is hearing a case involving sexual assault it will look at all the circumstances of the assault. Generally, the main issue in sexual assault is whether or not the other party consented. However, consent does not count if it has been obtained by a person in authority such as a teacher, principal or employer as there is a great imbalance in power, age and emotional maturity.⁵⁴ For example, a teacher cannot argue that the student agreed to sexual activity. Sex between two consenting

adults is legal; sex between an adult and a minor is illegal.⁵⁵ In other words, even if the young person agreed to the sexual activity it is still illegal.

Example:

*R. v. Lasecki*⁵⁶

In this case the principal of a school came up behind the student and placed his cupped hands against her buttocks. She turned and looked at him; he moved his hands away.

The judge said that:

It was a touching, on school premises, by a principal, of a student. There is a great imbalance in power, age, and as the evidence of the complainant's mother in this case demonstrates, emotional maturity.

VIII. MYTHS AND REALTIES

The following section lists some myths that people often associate with sexual harassment. Test yourself.⁵⁷

1. **Myth:** *Sexual harassment is just having fun.*

Reality

- Unlike flirting or good-natured joking, which are mutual interactions between two people, sexual harassment is unwelcome and unwanted behaviour which may cause the target to feel threatened, afraid, humiliated and often trapped.
- If sexual harassment feels like fun to someone, it could be one-sided fun at someone else's expense.
- Sexual harassment is illegal.

2. **Myth:** *Girls cannot sexually harass other girls.*

Reality

- Examples of same sex harassment include spreading sexual rumors, hanging sexually demeaning posters or writing sexual graffiti about another girl around the school.

3. **Myth:** *Girls cannot sexually harass boys.*

Reality

- The AAUW survey found that 57% of boys who have been harassed have been targeted by a girl and 35% by a group of girls.
- The kinds of examples boys give include comments on the size of their private parts, jokes about the extent of their sexual experience, being called "gay" and other unwanted grabbing of their butts.⁵⁸

4. **Myth:** *If a girl wears tight clothes she is asking to be sexually harassed.*

Reality

- Just because boys and girls like to dress stylishly does not mean that they are looking to be sexually harassed.
- Women and girls are sexually harassed regardless of their appearance, race, age, class, occupation or marital status.

5. **Myth:** *A boy who claims he has been sexually harassed is a sissy or a nerd.*

Reality

- Although there are strong social pressures on boys not to identify themselves as the targets of sexual harassment, the law makes no distinction.

6. **Myth:** *Sexual harassment is not a serious problem in school.*

Reality

- A majority of students report that at sometime in their school life they experience some form of sexual harassment.

7. **Myth:** *Boys are sexually harassed just as often as girls.*

Reality

- Boys are not harassed as often as girls but surveys indicate that a significant number of boys report having been the target of sexual harassment in school.

8. **Myth:** *The only people who can harass at work/school are those in positions of authority.*

Reality

- Classmates, friends and co-workers can be harassers.⁵⁹

9. **Myth:** *One of the best ways to deal with sexual harassment is to ignore it.*

Reality

- Sexual harassment only gets worse if it is ignored. Victims need to take action to stop the sexual harassment.

10. **Myth:** *Most women/girls enjoy getting sexual attention at work and at school.*

Reality

- Most women/girls are angry and embarrassed by sexual attention at school or at work.
- Many people like to be complimented; this is different from being sexually harassed. Personal comments about a woman's or a man's body or physical appearance often make them feel uncomfortable.

IX. THE EFFECTS OF SEXUAL HARASSMENT



Many studies have found that sexual harassment can affect a student's self-esteem and confidence. Self-esteem is very important for students. People who have low self-esteem view themselves as unworthy and unlikable. Researchers have found that low self-esteem is related with anxiety. Symptoms of anxiety may be nausea, headaches, muscular spasms, insomnia and high blood pressure.⁶⁰ If the sexual harassment continues a student may develop more serious stress related diseases.

Both the psychological and physical impact of sexual harassment can affect academic grades.⁶¹ For example, girls may choose not to take a class because they feel threatened or they may limit their participation in classroom discussions. In the more serious cases a student may feel that her only option is to transfer schools. Studies have shown that sexual harassment can also be a barrier for girls who wish to enroll in non-traditional courses in junior high and senior high school, like carpentry or mechanics.

The AAUW survey documented the following results for victims of sexual harassment:

- not wanting to go to school;
- not wanting to talk as much in class;
- finding it hard to pay attention in school;
- staying home from school or skipping class;
- finding it hard to study; and
- changing schools.

It is Not Your Fault!

It is important to remember that it is not your fault. It is the harasser who has the problem, not you. Rather than focusing on the harasser it is important to think about yourself and getting yourself through this difficult time.

Examples:

She didn't want to leave, she likes [this school] but there was nothing else she could do. The school wasn't going to do anything and she was not going to be subjected to this kind of harassment for another year. You never know where it might lead to.⁶²

Izabela speaking about a close friend

Maria had accused her ex-boyfriend, Peter, of sexual harassment. After they broke up, he wouldn't leave her alone. He left notes in her locker. He followed her down the hall, talking loudly about what a great kisser he was. Worst of all, he touched her in front of other people. In a class they had together, Peter sat behind Maria and sometimes touched her shoulders and neck or hair. It was embarrassing for Maria and made her unable to focus in class. She spoke to some teachers and the principal, who talked to Peter and gave him a week of detention. Peter's behaviour did stop then, but Maria now had to deal with her friends, who gave her the silent treatment or else whispered about her. 'It's crazy,' Maria said. 'I feel as if

I've done something wrong!' But she knew she hadn't. So she ignored Peter and his friends and focused on her art classes. She became so involved that she forgot the Peter situation, and finally his friends forgot it too.

Adapted from Elizabeth Bouchard, *Everything You Need to Know About Sexual Harassment*, (New York: The Rosen Publishing Group, 1994).

Mark was swimming with his classmates during a gym class. He decided to take a break and buy a coke. As he was walking on deck two of his classmates came up behind him and pulled his swimming trunks down around his ankles. He was mortified and refused to go swimming next gym class.

X. SCHOOL BOARD POLICIES AND PROCEDURES

A. Elements of a School Board Sexual Harassment Policy

Many people think that the best way to combat sexual harassment is through education. If a school or school board has an effective sexual harassment policy, it sends a message to employees and students that sexual harassment will not be tolerated. You may want to find out if your school has a policy and if so what is contained within the policy. Not all schools will have sexual harassment policies. For example we conducted a survey in Alberta and found that 9 out of 11 school boards currently have sexual harassment policies in place.⁶³

Most policies will have the following essential elements:⁶⁴

- a statement regarding sexual harassment;
- a definition of sexual harassment and a list of specific behaviours which make up sexual harassment;
- a statement regarding who is covered by the policy;
- options for informal (solving it without the authorities) and formal (reporting the behaviour to the authorities) resolutions;
- timelines for each step;
- protection of privacy whenever possible; and
- steps that will be taken if disciplinary action is necessary.

When a sexual harassment policy exists and is widely circulated amongst students, parents and administrators everyone will:

- know that the school will not tolerate sexual harassment;
- know that sexual harassment is illegal and is against board policy;
- be aware of what the definition of sexual harassment is;
- know the steps to follow if sexual harassment occurs;
- know where to get help if they cannot resolve the problem;
- know the difference between sexual assault and sexual harassment; and
- know that there is professional help for the victim.⁶⁵

B. Informal Resolution

When a person gets an informal resolution to their sexual harassment problem he or she has decided to fix the situation without involving the authorities. Most victims of sexual harassment just want the harassment to stop. They may have no desire to file a formal complaint. If you feel comfortable talking to the harasser, tell the person how his or her behaviour is affecting you and tell the person that you want the behaviour to stop. If you decide to do this, you may want to take a friend along for support. Talk to the person in a place where you feel safe. Prepare what you are going to say beforehand. You will feel more confident if you feel prepared.

Sometimes talking to the harasser is not an option. You may feel uncomfortable or afraid. If this is the case consider writing a letter to the harasser. A letter shows that you are serious about the problem. Most experts agree that the letter should include 5 key elements:

- a description of the harassing behaviour;
- how it makes you feel;
- the consequences you have experienced as a result of the behaviour;
- a request that the harasser stop the behaviour; and
- a list of steps you will take if the harassment does not stop (i.e. report the behaviour to the principal or a trusted adult).

Susan Strauss, in her book *Sexual Harassment and Teens*, suggests that you make two copies of the letter, one for the harasser and one for yourself.⁶⁶ If your school has a sexual harassment policy you may want to attach a copy of the policy to your letter. Susan Strauss also recommends giving the letter to the harasser in the presence of a trusted adult. The adult does not have to say anything but it will emphasize to the harasser that this is a serious matter.

Sample letter



Date

To ABC

When I walk to English class on Tuesdays and Thursdays I pass you in the hallway. Every time I pass you, you make rude noises and make comments like: "Hey babe, why don't you wear shorter, sexier skirts". I told you that I don't like these comments.

Your behaviour makes me feel upset and embarrassed. I find your comments humiliating and demeaning. I find it hard to concentrate in English class after you have made these comments.

I would like you to stop this behaviour. If you do not, I will take this letter to the principal and discuss the matter with him/her.

Sincerely,
DEF

Keeping a Journal



Many would agree that it is a good idea to keep a journal of events. In your journal you can note the date, the times and the places that the harassment occurred. Write down a detailed account of what the harasser said or how he or she behaved. It is also important to include your feelings. How did his or her behaviour affect you? How did you feel? If there were people who saw the incident(s), write down their name(s).

Ask your friends if something similar has happened to them. You may not be alone. This will give support to your complaint.

C. Formal Complaints

If you cannot bring yourself to confront the harasser directly or if you have confronted him and the harassment continues, it may be necessary to get outside help. Find out if your school has a sexual harassment policy. Who is in charge of handling complaints? How do you file a complaint? If your school has a sexual harassment policy, the steps will be specifically outlined. For example, the Red Deer Roman Catholic School District policy reads as follows:

2. Formal or Written Complaints

A. Students or employees who believe they have been sexually harassed may submit a written complaint to a trusted adult, the principal or the superintendent. A valid letter of complaint should normally contain the following information: who the alleged harasser was/is, where the

SEXUAL HARASSMENT IN SCHOOL

alleged harassment took place, when the alleged harassment took place, the nature of the alleged harassment, and witnesses, if any.

B. The trusted adult, principal or the superintendent may refuse to take action on a complaint which is deemed to be frivolous or vexatious. The trusted adult's decision may be appealed to the principal. The principal's decision may be appealed to the superintendent. The superintendent's decision may be appealed to the board.

C. If the trusted adult believes action is necessary, the principal or superintendent will be notified.

D. The superintendent will investigate the details of the complaint, hear evidence from the parties involved, and recommend solutions to identified problems. The superintendent may take appropriate action.

Red Deer Roman Catholic School Board, Sexual Harassment Policy,
June 1994

If a school has a policy on sexual harassment the law requires that the school actively enforce the policy. The policy should be posted and referred to. All staff and students should be aware that the policy exists and how to complain about sexual harassment. For example, the Calgary Board of Education states that it is the responsibility of supervisory personnel to make students and in particular, staff, aware of the policy, regulation, and procedures relating to sexual harassment.⁶⁷ It is helpful if students are provided with a plain language version of the sexual harassment policy and procedure.

School and school board sexual harassment policies can change. It is important to make sure that you have the most current version of a policy.

D. Discipline

If a student is found to be sexually harassing another student or staff member the school may take some form of disciplinary action. The form of discipline will vary depending on the school and the seriousness of the incident(s).⁶⁸ The Calgary Board of Education's Policy states that

any student who subjects a student, staff member, parent volunteer or other member of the public to sexual harassment may be subject to disciplinary action, including dismissal from school. (Calgary Board of Education Policy 4,027.2)

In the Calgary Board of Education, students who are found responsible for serious or repeated misbehaviour can be suspended or expelled. The Board lists examples of serious misbehaviour. Sexual harassment is included in the following list:

- use, possession of, or active contact with weapons;
- threats which, in the judgment of the principal, endanger others;
- theft;
- assault causing harm;
- vandalism;
- use, possession of, distribution of, or active contact with drugs or alcohol;
- **personal or sexual harassment;**
- extortion;
- involvement in or association with criminal gang activities;
- other forms of criminal activity;
- disruptive behaviour;
- defiance of authority; and
- obscene or abusive language.

(Calgary Board of Education, Regulation 1031, 1994)

A suspension usually involves the temporary enforced absence from a class or school. The student will normally return to the same class or school. When a student is expelled from school, he or she is excluded from that school for a specified period of time. The superintendent will only resort to expulsion when all of the other options available to the superintendent are not suitable.

If a student is found to be sexually harassing another student, expulsion will be the last resort. It will depend upon the seriousness of the situation.

Even if your school has no policy, the principal is still under an obligation to resolve the situation. Sexual harassment is illegal and your school has a legal obligation to provide a safe and healthy environment for students.

XI. LEGAL ASPECTS OF SEXUAL HARASSMENT



If your complaint to the proper authorities does not bring results there are other things that you can do. Sexual harassment is illegal and Canadian law has created certain avenues that can be taken with respect to a sexual harassment complaint.

Courts were created to ensure that all citizens are treated equally and judged by the same standards. Laws not only set out society's legal rights and responsibilities but are also instruments for social change. The development of sexual harassment law clearly demonstrates this change.⁶⁹ However, the current confusion over the issue of sexual harassment shows how hard it is to reflect a change in society in the law. For example, while some people are fighting for

equal rights for women some people may be resisting any change in the role and status of women.⁷⁰

A. Sexual Harassment as Sexual Discrimination

While sexual harassment is not a Criminal Code offence, legislation passed in Canada and in the provinces says that it is illegal. In the beginning, Canadian human rights laws did not say that sexual harassment was illegal. These laws only said that discrimination was against the law. Therefore, if the courts wanted to say that sexual harassment was illegal, they had to say that sexual harassment was a form of discrimination.

1. What is Discrimination?

Discrimination means that someone is being treated unfairly because of a certain characteristic. Discrimination often leads to harassment and hurts people in many ways. It affects how people get along. It also affects how people work and earn money. Discrimination may lead to unequal treatment in schools and places of employment.



Below is an example of a case of discrimination in Canada.

Twelve year old Justine Blainey was barred from playing in the Metro Toronto Hockey League because she was a girl. The Association said that the league was for boys only.

Justine challenged this ruling by arguing that it violated section 15 of the Charter of Rights and Freedoms which said that you could not discriminate on the basis of sex. The Supreme Court of Canada agreed with Justine and said that she was the victim of discrimination. After this ruling the Ontario Human Rights Commission said that "Discrimination on the basis of sex in athletic activities is now unlawful in Ontario". The Hockey Association lifted the ban.

In 1989, the Supreme Court of Canada confirmed that sexual harassment was a form of sex discrimination in a case called *Janzen v. Platy Enterprises*.⁷¹

In this case two women, Diane Janzen and Tracy Govereau, complained about the cook at the restaurant where they worked as waitresses. The cook often tried to touch the women and made repeated sexual advances and comments to them. Although they complained to the manager the complaints were not taken seriously. One of the women quit and the other was fired. Tracy and Diane filed a complaint and won their case. The Supreme Court said that sexual harassment is a form of discrimination.

2. Liability of Employers

In Canada, the law says that in cases of sexual harassment the employer is responsible for the actions of his or her employees. The law says that an employer is responsible for maintaining a safe work environment. In a case called *Robichaud v. R.*⁷² the court said that employers are responsible for the harassing behaviour of their employees. This means that employers must take responsibility for sexual harassment in their workplace. It is an employer's legal responsibility to create and maintain a workplace free of sexual harassment.

Schools also have a legal responsibility to provide a safe atmosphere, free of harassment for their employees and students. Provincial human rights codes make it clear that persons in authority must take sexual harassment seriously. In other words, persons with the authority to prevent discrimination in the schools may be held responsible for failing to do so.⁷³

Below is an example of case⁷⁴ where parents were held responsible for the behaviour of their thirteen year old son. It is the first human rights ruling in Canada on the liability of parents for their children's behaviour in an employment setting.

In 1997, the parents of a 13 year old boy were found liable for their son's harassing behaviour. The boy sexually harassed his nanny over a period of three months. When the nanny complained, the boy's parents laughed and minimized the boy's conduct. The British Columbia Human Rights Commission ruled that after the nanny complained, the parents should have taken action to stop the behaviour.

The tribunal awarded the nanny money for damages to her dignity and self-respect plus money for lost wages.⁷⁵

B. The Alberta Human Rights and Citizenship Commission



Each province has a provincial body that protects individuals against discrimination. The Alberta Human Rights and Citizenship Commission (AHRCC) is the provincial body that is responsible for preventing discrimination against Albertans.

Before discussing the Alberta Human Rights and Citizenship Commission it is important to have a basic understanding of the concept of human rights.

1. Human Rights

Human rights are universal, moral rights. This means we are equally entitled to human rights regardless of our colour, age, race, gender, language, class or religious or political beliefs.⁷⁶ In other words people cannot be discriminated against on the basis of these characteristics.

Human rights are often divided into two general categories. First, civil and political rights are rights concerned with giving individuals freedom of action, freedom of choice and freedom to participate in political life.

They include:

freedom of speech;
freedom of movement;
the right to vote;

freedom of religion and conscience; and
freedom of thought, belief, and expression.

Second, economic, social, and cultural rights seek to protect people's physical, material, social, and economic well being. They include:

the right to work;
the right to rest and leisure; and
the rights to adequate food, clothing, housing, and
medical care.



There are several legal instruments in Canada which protect our human rights and protect us against discrimination. The *Canadian Charter of Rights and Freedoms* guarantees and protects Canadians against actions of the government. If you think that the government is discriminating against you in any way or that your rights are being infringed upon, you can apply to the court to act as a referee. In other words you can ask the courts to decide if your rights have been violated.

The Charter only protects individuals against government actions. Each province has a provincial law which is designed to prevent discrimination against all members of the community. The *Human Rights, Citizenship and Multiculturalism Act* is Alberta's provincial human rights code and is administered by the Human Rights and Citizenship Commission. The Act was originally passed in 1972 and was amended (changed) in 1980, 1985 and 1996.

The Act prohibits discrimination in:

- employment and employment advertising;
- tenancy (rental housing);
- services customarily available to the public; and
- notices (this may include advertisements in the newspaper or posters on a bulletin board).

The Act provides protection from discrimination based on the following grounds:

- race;
- physical disability;
- ancestry;
- religious beliefs;
- mental disability;
- place of origin;
- colour;
- marital status;
- source of income;
- gender (includes **sexual harassment** and pregnancy);
- age (only protected in employment related areas and public notices); and
- family status.



2. Areas Covered by the Alberta Human Rights and Citizenship and Multiculturalism Act ("The Alberta Act")

Before discussing how the Alberta Act applies to the area of sexual harassment it is necessary to examine all the areas that the Alberta Act covers.

a. Employment and Employment Advertising

The Alberta Act provides that every person is entitled to equal treatment in employment. The Act prevents employers from refusing to hire an individual because of his or her race, religious beliefs, colour, gender, physical disability, mental disability, marital status, family status, age, ancestry, place of origin, or source of income. For example, an employer cannot refuse to hire an individual because he is married or because she is female.

In certain cases an employer may have legitimate reasons for not wanting to hire an individual. For example, an employer would not hire a blind person to drive a bus. The Alberta Act recognizes these reasons and allows discrimination in some areas.

In an employment setting an employer is responsible for maintaining a workplace that is free from harassment and discrimination. If they fail to do so, they may be held responsible.

b. Tenancy

Tenancy refers to rental housing. No person can be denied rental housing because of race, gender, colour, religious beliefs, physical or mental disability, ancestry or place of origin, marital status, family status and source of income. All persons must be treated equally regarding the amount of rent, leases, rules and regulations. Age is not protected in this area.



c. Services Customarily Available to the Public

The Supreme Court of Canada has defined "service" as "restaurants, bars, taverns, service stations, public transportation and public utilities".⁷⁷ Services also includes schools.⁷⁸ This means that every person should have equal access to hospitals, universities, shops, restaurants, etc. The Alberta Act prohibits discrimination in this area based on race, gender, physical or mental disability, religious beliefs, colour, ancestry or place of origin, marital status, source of income and family status. This section does not include protection on the basis of age.

d. Notices

The Alberta Act prohibits the publication of notices, signs and symbols which indicate discrimination.⁷⁹ This may include posters or advertisements. An individual cannot post notices that discriminate against certain groups of people. For example, a restaurant could not post a notice saying it only served "white people".

3. The Purpose of the Alberta Act

The Alberta Act is not a criminal code. The Commission does not try to establish guilt or innocence. The aim is not to punish offenders, but to provide remedies (solutions) for victims of discrimination. Since the Alberta Act is not meant to punish, large money awards are not usually given. For example, the Board may order the employer to apologize, to post notices saying sexual

harassment is illegal or to pay an individual for lost wages and psychological harm.⁸⁰ Often, victims of sexual harassment may only want an apology and nothing else.

4. Making a Complaint

Under the Alberta Act, sexual harassment is not prohibited in itself, but is included under discrimination on the basis of gender (sex). Court cases have said that gender includes sexual harassment.

1. Complaints can be made by completing a form or sending a letter to the Commission. The person making the complaint is called the **complainant**.
2. The **respondent** (the person against whom the complaint is being made) will be notified about the complaint.
3. A staff person will attempt to find a solution that is agreeable to both parties. This process is called **conciliation**.
4. If an agreement is not possible the Commission will then **investigate** the complaint.
5. If it is determined that the Act was violated then the Commission officers will attempt to **negotiate** a settlement.
6. If a settlement cannot be reached a Human Rights Panel may be directed to hear the case. In other words the case will be brought before one or more individuals. It will be up to the panel to make a decision.

5. Remedies that can be Granted by a Human Rights Commission

A remedy is defined as financial or non-financial relief which is awarded to an individual. The purpose of the remedy is to try and restore the person who has been discriminated against to the position they were in before the discrimination took place. It is not the purpose of the Commission to punish the offender.

For example, if a woman lost her job because of sexual harassment, the Commission may order the employer to:

- apologize to the complainant;
- commit to not repeating the harassment or make sure that no one else in the workplace harasses others;
- rehire the complainant, if the complainant wishes to return to her former job;
- award to victim money for lost income as well as any pain (mental suffering) she may have suffered as a result of experiencing the harassment (these type of money awards are difficult to calculate);
- have an educational session on sexual harassment for the employees; and/or
- introduce a sexual harassment policy in the workplace, if one does not already exist.

In an Ontario case, *Torres v. Royalty Kitchenware Ltd.*,⁸¹ the Board identified certain factors that are to be considered in determining damages in a sexual harassment case. These include:

- the nature of the harassment; that is, was it simply verbal or was it physical as well;
- the degree of aggressiveness and physical contact in the harassment;
- the time period of the harassment—did it go on for a long time;
- the frequency of the harassment;

- the age of the victim; and
- how it affected the victim.

6. Proving Sexual Harassment

Proving sexual harassment can be difficult. It may be a case of one person's word against another's. There may have been no witnesses when the sexual harassment occurred, or if there were, the witnesses may not want to talk about what they saw. In a case of sexual harassment witnesses are not always necessary but can be helpful.

In a lot of sexual harassment cases there may have been no witnesses to what happened. Therefore the only people who can testify are the person who has been harassed and the person who has been accused. Almost all cases are won or lost on the credibility of the complainant or respondent. In other words the story must be told in a straightforward and honest manner. It is important that no facts are exaggerated.⁸²

Some Legal Cases

*Lynch v. Theodorakakas*⁸³

In this case the complainant, Lynch, worked as a waitress. She complained to the manager about the cook's behaviour towards her. The cook made sexual comments about her appearance and about sexual conduct. He had also touched her on several occasions. Although Lynch complained, the employer failed to do anything about the cook's behaviour. In other words, the employer did not talk to the cook or tell him to stop the behaviour.

The B.C. Human Rights Council believed Lynch's story even though there were no witnesses to the cook's actions. They found the employer responsible for failing to provide a healthy work environment.

*Arborgast v. Empire-International Investment Corp.*⁸⁴

Wanda Arborgast worked as a secretary for Empire-International Investment Corp. She complained that her employer had made sexual comments

about her, stared at her body, hugged her and made sexual advances towards her.

Wanda had no witnesses to support her case and some witnesses contradicted her evidence. Because of this contradictory evidence the B.C. Human Rights Council believed the employer, who denied that any of the incidents had occurred.

7. Why Victims may not want to Complain About Sexual Harassment

- They may be confused, frustrated and angry and may not know how to handle the situation.
- They may be uncertain how the supervisor (principal) will react.
- They don't think their school/workplace will support them.
- They feel embarrassed.
- They don't want to get the harasser into trouble.
- They may be reluctant to file a complaint because they are worried that their privacy may not be protected.

8. Students and the Alberta Human Rights and Citizenship Commission

There is no age limit on making a complaint to the Human Rights and Citizenship Commission. However, it is suggested that a young person pursue a human rights complaint with the assistance of a parent or a trusted adult.

Below is an example of a case where two fifteen year old girls made a complaint to the Ontario Human Rights Commission.

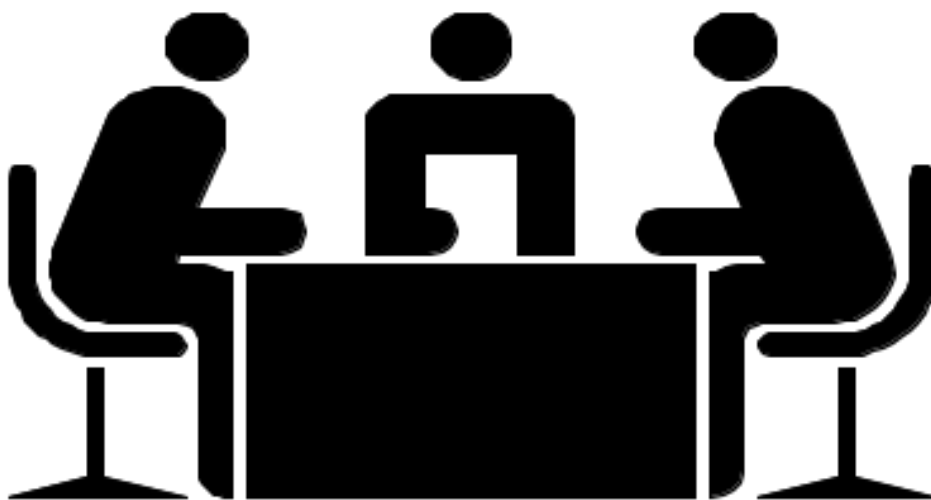
Bruce v. McGuire Truck Stop⁸⁵

This case involved two fifteen year old girls who worked part-time at McGuire's Truck Stop. The two girls both attended high school and worked at the truck stop in the evenings.

While working at the truck stop, the two girls were repeatedly touched by the owner of the truck stop. He made sexual comments to the girls and showed

them a pornographic video. The two girls left their job as a result of the owner's behaviour.

The Ontario Board of Inquiry found that the employer had created a poisoned work environment. The Board pointed out that the employer had taken advantage of their age and inexperience. The employer (owner) was ordered to pay the girls money for lost wages and money for mental distress.



C. Criminal and Civil Courts

1. Criminal Court

A victim may complain to the police if the offender has violated the Criminal Code of Canada. There is no criminal law specifically dealing with sexual harassment. However, some actions which make up sexual harassment may violate the Criminal Code. For example, if the victim has been sexually assaulted she can make a complaint to the police. A complaint to the police does not cost anything. The harasser will usually be given a criminal record if found guilty.

Criminal sexual assault can be any of the following:

- rape (forced sexual assault);
- kissing you or forcing you to kiss him;
- touching any sexual parts on your body;
- causing bodily harm or wounding or maiming while sexually assaulting you;
- removing or attempting to remove your clothing;
- exploiting a position of trust or authority to get sex; or
- threatening to do any of these things.⁸⁶

There is a new section in the Criminal Code which deals with criminal harassment.⁸⁷ This is often called the stalking provision. Under this section, anyone who repeatedly communicates with another person in a way that makes a person fear for his/her safety can be charged. The provision says that you cannot harass another person by repeatedly communicating with her or watching her where she lives or works. You are also not allowed to threaten the victim's friends or family.

2. Youth and the Criminal Law

Criminal law applies to young people between the ages of 12 and 17. The federal government created the *Young Offenders Act*⁸⁸ to deal with youth who come into conflict with the law. When youths reach the age of 12, they are held responsible for their own actions. If a youth breaks the law, the police will charge him/her with committing an offence. The Criminal Code offences dealing with sexual assault and criminal harassment apply to young people.

If a school considers an offence to be serious (e.g., sexual assault, criminal harassment) they will report it to the police. Once the matter is referred to the police, the police officer will decide to take informal or formal action. If the police officer chooses to take an informal route, he or she may speak to the student and parents about the consequences of his/her actions.⁸⁹ If a police officer takes a formal route, the officer may arrest the youth and take the young person to the police station.

If the young person is arrested and taken to the police station there are special rules in the *Young Offenders Act* that tell how he or she is to be treated. For example the young person must be given the opportunity to contact a lawyer or parent before making a statement. Young people can only be detained if the police believe they pose a threat to themselves or to others or if the police do not think they will show up in court. An adult who is arrested has the same rights as a youth except for the fact that a youth must be given the opportunity to have a parent present.

If the police proceed with formal charges, they will swear an "information". An information is a written statement claiming that a person has committed an offence. It is important to remember that under the *Young Offenders Act*, young persons have the right to a lawyer. If a young person is unable to obtain legal counsel, then a lawyer will be provided through legal aid.

3. Civil Court

Rather than file a criminal complaint, people who have been sexually harassed often want to sue the harasser for money damages in civil court.⁹⁰ In a civil case, the victim may seek money damages from the harasser as well as the employer or school board.⁹¹ This will require obtaining legal advice from a lawyer, which will be expensive. Unlike a human rights complaint, the victim

must bear the costs of a legal battle. In other words the victim must pay for the lawyer. Legal aid is not available for most civil actions.

In a civil case, the victim, called the "plaintiff" sues the person who harmed him or her, the "defendant", for damages (money) or some other remedy. For example, a person may be able to bring a claim resulting from a car accident that resulted in injury. The most common purpose of a civil action is to allow the plaintiff to claim money damages to help repay him/her for injury or loss which she or he has endured. This may include psychological injury or mental distress. If the plaintiff can prove that she suffered psychological injury, then she may win in a civil suit.

Although many victims of sexual harassment want to sue to recover damages most courts have said that the human rights commission in each province is an appropriate place for dealing with discrimination complaints. However, victims of sexual harassment have successfully sued in civil court for psychological or physical injuries.

Damages

A person can sue if he or she has suffered mental or physical harm. The court will order the responsible person to pay the victim money to make up for this harm. There are different kinds of damages that may be awarded in a civil action. Each kind of damage is assigned an amount of money to be paid. The most common type in a sexual harassment civil suit are general damages. These refer to damages such as pain, suffering and mental anguish. These types of damages are difficult to calculate and it is often up to a judge to decide what the amount will be.

Wrongful and Constructive Dismissal

Everyone has the right to work in a safe environment. A victim of sexual harassment may sue if he or she feels that the workplace has become so unbearable that the person is forced to quit his or her job. If the victim is forced to quit, this is called constructive dismissal. A victim of sexual harassment may be fired for complaining about sexual harassment or for refusing to give in to sexual requests. Firing a person under these conditions is called wrongful dismissal. In a constructive or wrongful dismissal case, the victim may be able to

win money damages. This is because the court treats the situation as if the person was not given proper notice that he or she was being fired.

4. Youth and Civil Court

A minor is a person under the age of 18. A minor cannot sue or be sued in his or her own name in a civil court. If a person under the age of 18 wants to sue someone, he or she must obtain the help of an adult. Usually a young person's mother or father will do this, but any adult is permitted to do so. We have been unable to locate any Canadian cases involving a youth suing a school or other classmate for sexual harassment. However, such a case is possible in Canada.

D. Sexual Harassment School Law in the United States



Because Canadian courts have not yet heard cases involving youth and sexual harassment, when these arise, they may look at U.S cases to see what happened there. In the United States, case law in the area of sexual harassment has developed dramatically in the last five years. In 1992, the United States Supreme Court ruled that a student can sue a school district for money resulting from sexual harassment. The case is called *Franklin v. Gwinnet County Public Schools*.⁹²

In this case, a student claimed that she was being sexually harassed by a coach. At first the teacher gave the student special attention. He followed her around school. He pressured her into having sexual intercourse on school grounds. The court ruled that students who are sexually harassed are allowed to sue the

school and/or school officials for money damages. The U.S. Supreme Court made it clear that schools owe their students protection from sexual harassment by teachers and by other students.

Since this ruling there have been numerous cases in the United States against schools. During 1992, several school districts were held responsible for allowing sexual harassment of students by other students and teachers. Below are some examples of recent cases in the United States.

An eighth grade student was repeatedly taunted by boys, who yelled "moo, moo" at her and continued throughout the day to make crude, sexual remarks about her breasts and other body parts. Boys would follow her around the school and make blunt and vulgar references about her breasts and the condition of other parts of her anatomy. She and her parents reported the behaviour to her school. The school did not do anything about the behaviour. The school district was found liable and had to pay the student \$20,000.

Brawdy v. Petaluma (CA) City Elementary &
Petaluma Union High School District

Katy Lyle, a fifteen year old high school student in Duluth, Minnesota was targeted through nasty graffiti that covered the walls of one of the stalls in the boys' bathroom. The principal took no action to remove the graffiti. The court found the school responsible and awarded Katy Lyle and her family \$15,000.

Lyle v. Independent School District #709, 1991.

In 1993, a 7 year old elementary student accused boys of sexually harassing her on the school bus. She stated that she was subject to persistent sexual harassment including name calling and unwelcome touching. The school district was accused of failing to respond to a "sexually hostile environment". This is the first case in the United States involving student to student sexual harassment at the elementary school level.

Mutziger v. Independent School District #272,
1992.

XI. MOVING ON

One of the worst things about harassment is that you may still have to be around the harasser after the situation is over.⁹³ It may be a fellow student or a co-worker. This can be extremely stressful, even if the harassment has stopped. Many experts advise that you surround yourself with supportive friends.⁹⁴ Find out if there is someone you can talk to at the school. This person may be a teacher, a coach or a guidance counselor. If some of the people around you are not being supportive, find someone who is. If you are becoming seriously affected and are experiencing depression or anxiety you may need professional help. Talk to your parents or guidance counselor about seeing a professional therapist.⁹⁵

XII. CONCLUSION

In order to prevent sexual harassment it is important that students are educated about the issue. All students and educators have a responsibility to know and understand their rights and responsibilities as they relate to sexual harassment. Students need to know what sexual harassment is and that it is illegal and will not be tolerated in an educational or workplace setting. The incidents of sexual harassment will be reduced if students and educators are aware that it is against the law.

Schools are under a legal obligation to have and to follow policies to make the school a safe place to study and learn. It is important for students to become aware of the policies and procedures in their school. It is not enough to have a policy in place. Educators and students have the right to study and work in an environment that is safe and free of fear and intimidation.

NOTES

- 1 June Larkin, *High School Girls Speak Out* (Toronto: Second Story Press 1994) at 19 (hereinafter Larkin).
- 2 Robert Shoop and Debra Edwards, *How to Stop Sexual Harassment in Our Schools* (Toronto: Allyn & Bacon, 1994 (hereinafter Shoop and Edwards).
- 3 Shoop and Edwards at 14.
- 4 Deborah Ann Campbell, *The Evolution of Sexual Harassment Case Law in Canada* (Industrial Relations Centre, 1992) at 1 (hereinafter Campbell).

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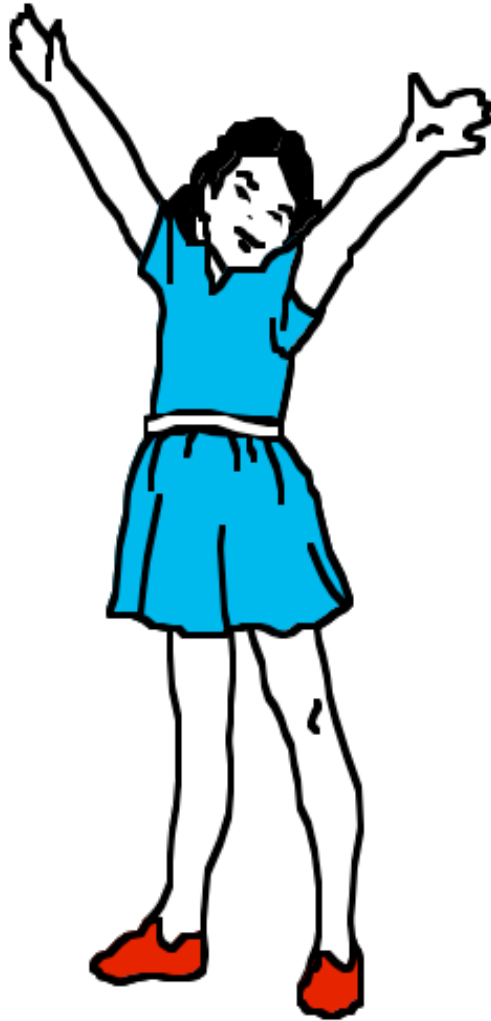
- 5 This is discussed under X. School Policies and Procedures.
- 6 The Ontario Secondary School Teacher Federation, *The Joke's Over - Student to Student Sexual Harassment in Secondary Schools*, (1995) (hereinafter *The Joke's Over*). For a complete version of the survey and findings, please contact: OSSTF, 60 Mobile Drive, Toronto, Ontario, M4A 2P3.
- 7 American Association of University Women Educational Foundation, *Hostile Hallways*, The AAUW Survey on Sexual Harassment in America's Schools, (1993) at 5 (hereinafter *Hostile Hallways*).
- 8 *Hostile Hallways* at 5.
- 9 *Hostile Hallways* at 5.
- 10 Kathryn Scott, "Seventy Five Years Later... Gender-Based Harassment in Schools" (1995) 59 *Social Education* 293 at 293.
- 11 *Janzen v. Platy Enterprises* (1989), 25 C.C.E.L. 1, [1989] 1 S.C.R. 1252, [1989] 4 W.W.R. 39, 89 C.L.L.C. 17,011, 59 D.L.R. (4th) 352, 10 C.H.R.R. D/6205, 47n C.R.R. 274 (sub nom. *Janzen v. Pharos Restaurant*) 95 N.R. 81, per Dickson C.J.C.
- 12 Calgary Public School Board, Policy 4,027.2.
- 13 Calgary Public School Board, Policy 4,027.2.
- 14 *The Joke's Over* at 6.
- 15 Larkin at 13.
- 16 Larkin at 13.
- 17 Larkin at 13.
- 18 Russell Sabella & Robert Myrick, *Confronting Sexual Harassment; Learning Activities for Teens* (Minneapolis: Educational Media Corporation, 1995) at 12.
- 19 *The Joke's Over* at 6.
- 20 Susan Strauss, *Sexual Harassment and Teens* (Minneapolis: Free Spirit Publishing, 1992) at 15 (hereinafter *Strauss*).
- 21 Dr. Percy Bates, *Tune in to Your Rights...A Guide for Teenagers about Turning off Sexual Harassment*, (1985) at 8 (hereinafter *Bates*).
- 22 *The Joke's Over* at 10.
- 23 Larkin at 76.
- 24 Larkin at 80.
- 25 Criminal Code, R.S.C. 1985, c.C-46, s.265.
- 26 This is discussed under VII. Sexual Assault and XI. Legal Aspects of Sexual Harassment.
- 27 Larkin at 85.
- 28 Shoop and Edwards at 274.
- 29 Larkin at 90.
- 30 Arjun P. Aggarwal, *Sexual Harassment: A Guide for Understanding and Prevention* (Toronto: Butterworths, 1992) at 112 (hereinafter *Aggarwal*).
- 31 A. Brown & M. Zuker, *Education Law*, (Toronto: Carswell, 1994) at 214.
- 32 *Hutchinson v. Leonard's Society of Brant* (1993), (1993), 93 C.L.E.L. 306 (Ont. Gen. Div.).
- 33 *Hostile Hallways* at 7.
- 34 *Hostile Hallways* at 7.
- 35 *Hostile Hallways* at 19.
- 36 *Hostile Hallways* at 19.
- 37 *Hostile Hallways* at 19.
- 38 *Hostile Hallways* at 24.
- 39 Shoop and Edwards, at 100.
- 40 Shoop and Edwards at 104.
- 41 With thanks to Linda McKay-Panos.
- 42 Aggarwal at 1.
- 43 Aggarwal at 1.

44 Aggarwal at 1.
 45 Larkin at 26.
 46 Donovan R. Walling, *Gay Teens at Risk*, (Phi Delta Kappa Educational Foundation,
 1993) at 7 (hereinafter Walling).
 47 Walling at 8.
 48 Susan Eaton, "Gay Students Find Little Support in Most Schools" *The Harvard*
Education Letter (1993).
 49 For more information on sexual assault see the bibliography for additional resources.
 50 Criminal Code, R.S.C. 1985, c.C-46.
 51 METRAC, *Sexual Assault: A Guide to the Criminal Justice System*, 1994.
 52 *Tune in to Your Rights*. at 7
 53 *Tune in to Your Rights* at 7.
 54 (1994), 163 A.R. 354 (Q.B.), leave to appeal to S.C.C. dismissed (March 14, 1996)
 24983 (S.C.C.).
 55 Canadian Criminal Code, R.S.C. 1985, c.C-46, s. 151.
 56 (1994), 163 A.R. 354 (Q.B.).
 57 Adapted from Susan Strauss, *Sexual Harassment and Teens*, (Minneapolis: Free Spirit
 Publishing, 1992) at 75.
 58 Nan Stein and Lisa Sjostrem, *Flirting or Hurting: A Teacher's Guide to Sexual*
Harassment (Washington: NEA Professional Library, 1994 at 29 (hereinafter Stein and
 Sjostrem).
 59 Strauss, at 77.
 60 C. Backhouse and L. Cohen, *The Secret Oppression* (Toronto: MacMillan, 1978) at 48.
 61 Shoop and Edwards at 66.
 62 Larkin at 111.
 63 The following school districts currently have sexual harassment policies in place: Red
 Deer Public School District, Red Deer Roman Catholic Separate School District,
 Calgary Public School Division, Calgary Roman Catholic Separate School District,
 Edmonton Public Schools, Edmonton Catholic Schools, Medicine Hat School District,
 Rocky View School Division, Elk Island Public School Division. No Policy: Medicine
 Hat Roman Catholic School Division. Sherwood Park Catholic Separate School
 Division is in the process of developing a sexual harassment policy.
 64 Adapted from *A Time For Action on Sexual Harassment in the Workplace: An*
Employer's Guide Ontario Women's Directorate, 1993.
 65 *The Joke's Over* at 132.
 66 Strauss at 101.
 67 Calgary Board of Education, Regulation 4,027.2.
 68 For more information on school discipline, see Alberta Civil Liberties Research Centre,
Rights and Responsibilities, Navigating Through Alberta's Schools, (1996).
 69 Aggarwal at ix.
 70 Bouchard at 33.
 71 (1989), 10 C.H.R.R. D/6205 (S.C.C.).
 72 (1987), 8 C.H.R.R. D/4326 (S.C.C.).
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 74 *Guzman v. T.*, Jan. 14, 1997, B.C.H.R.C.
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 (January 18, 1997) A3.
 76 David Selby, *Human Rights: An Activity File* (Great Britain: St. Edmundsbury Press,
 1993) at 2.
 77 *Gay Alliance Toward Equality v. Vancouver Sun*, [1979] 4 W.W.R. 118 (S.C.C.), at
 125.

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- 78 *Alberta (Department of Education) v. Alberta (Human Rights Commission)* (1986), 9
C.H.R.R. D/4979 (Alta. C.A.), affirming (sub nom. *Alberta (Department of Education)*
79 *v. Deyell*) (1984), 8 C.H.R.R. D/3668 (Alta. C.A.).
Linda McKay-Panos, *Applications Before the Human Rights Commission*, (Calgary:
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Calgary Association of Women and the Law, *Woman and the Law in Alberta*, May,
81 1995 at 39.
(1982), 3 C.H.R.R.D./858 at D/873 (Ont. Bd. Inq.).
82 Aggarwal, at 67.
(1992), 16 C.H.R.R. D/319 (B.C. Human Rights Council).
83 (1993), 20 C.H.R.R. D/150 (B.C. Human Rights Council).
84 (1993), 20 C.H.R.R. D/145 (Ont. Bd. of Inquiry).
85 METRAC, *Sexual Assault: A Guide to the Criminal System*, (METRAC, 1994).
86 Criminal Code, R.S.C. 1985, c.C- 46, s.264.
87 Young Offenders Act, R.S.C. 1985, c.Y-1.
88 John Howard Society, *A Guide to the Young Offenders Act in Alberta* (John Howard
89 Society of Alberta, 1996) at 7.
90 Civil action can be taken in addition to a criminal charge.
91 Edmonton Working Women, *Sexual Harassment: Speak Out!* (Edmonton Working
Women, 1995) at 22.
92 112 S.Ct. 1028 (1992).
93 Elizabeth Bouchard, *Everything You Need to Know About Sexual Harassment* (New
York: The Rosen Publishing Group, 1994) at 53 (hereinafter Bouchard).
94 Bouchard at 54.
95 Bouchard at 57.

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APPENDIX

True/False Questions

1. T F Sexual harassment is illegal.
2. T F Females are sexually harassed because of the way that they dress.
3. T F Women are the only victims of sexual harassment.
4. T F Women in the workplace are only sexually harassed by their supervisors.
5. T F Girls sexually harass other girls.
6. T F Ignoring the harassment will make the behaviour stop.
7. T F Hugging someone is always sexual harassment.
8. T F Commenting on one's appearance can be sexual harassment.
9. T F Women are harassed more frequently than men.
10. T F Teachers are never harassed by students.

Answers

1. **T** Sexual harassment is sexual discrimination and is illegal in Canada.
2. **F** Sexual harassment has nothing to do with the way a person dresses. Anybody can be harassed, regardless of his or her age, race or appearance.
3. **F** In the AAUW study of sexual harassment in the schools, 76% of males reported that they had been sexually harassed. However, girls reported experiencing sexual harassment more frequently.
4. **F** Women in the workplace can be harassed by co-workers, supervisors and clients or customers.
5. **T** Studies show that girls or groups of girls sexually harass other girls.
6. **F** Choosing to ignore the behaviour will not make it clear to the harasser that the behaviour is inappropriate. Ignoring the behaviour may allow the harasser to think that his behaviour is acceptable.
7. **F** Hugging a friend is not always sexual harassment. When the behaviour becomes unwelcome to the recipient then the behaviour may be sexual harassment.
8. **T** Complimenting someone on his or her appearance is not always sexual harassment. However, if the behaviour persists and becomes unwelcome then it may be considered to be sexual harassment.
9. **T** Studies indicate that women and girls experience sexual harassment more frequently than males.
10. **F** Teachers can be sexually harassed by their students. In most cases the victim is female and the harasser is male. Male high school students can be bigger than their female teachers and can be physically intimidating.

Glossary

allege: to say something is true without proving it.

appeal: to refer a case to a higher court.

consent: to agree, to give permission.

credible: capable of being believed.

detain: to keep from going.

discriminate: to act toward someone with prejudice.

exaggerate: to go beyond the truth or fact.

frivolous: trivial or petty, not serious.

gender: one's sex, male or female.

harassment: the act of causing a person distress, or harming someone by repeated attacks.

harasser: a person who disturbs someone repeatedly.

homophobia: fear, hatred or prejudice towards homosexuals.

hostile: intended to hurt, unfriendly.

hostile educational environment: unwelcome sexual conduct that unreasonably interferes with an individual's school performance or creates an intimidating, hostile or offensive environment.

impact: the influence or effect on someone.

infringe: to violate or break the terms of something.

intent: the purpose or aim.

liability: legal responsibility, legal obligation.

myth: a popular belief, story, or tradition.

non-verbal harassment: displaying of material that is sexually suggestive such as pornographic photos, jokes, or drawings.

physical harassment: touching another person in a suggestive manner.

prejudice: a judgment or opinion formed beforehand or without thoughtful examination of the facts and issues. Hatred or dislike for a particular group, race, religion, etc.

quid pro quo: something for something. For example, saying "You will get an A on your exam if you go out with me."

sexual harassment: unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature.

verbal harassment: telling sexual jokes or stories, making sexual comments about a person's body, sexual propositions, sexually suggestive, or obscene comments.

vexatious: causes trouble or distress.

Useful Addresses

Alberta Human Rights and Citizenship Commission

Edmonton Office

#800 Standard Life Building
10405 Jasper Avenue
Edmonton, AB T5J 4R7
Phone: 427-7661
Fax: 422-3563

Calgary Office

#310, 525 11th Avenue S.W.
Calgary, AB T2R 0C9
Phone: 297-6571
Fax: 297-6567

Use the Rite Line to call toll-free outside of Edmonton/Calgary: 310-0000. The Rite Line can also provide you with information on provincial government departments.

Government of Canada Human Rights Commission

Highfield Place
308, 10010-106 Street
Edmonton, Alberta
T5J 3J2
(403) 495-4040

Calgary Birth Control Association

304-301 14th St. N.W.
Calgary, AB
T2N 2A1
283-5580

Calgary Communities Against Sexual Abuse (CCASA)

Suite 790
602-12th Ave. S.W.
Calgary, Alberta T2R 1J3
Office - 237-6905

Central Alberta Sexual Assault Centre

111-4818 50th Avenue
Red Deer, Alberta

T4N 4A3
Office: 340-1124
Distress Line: 340-1120

Sexual Assault Centre of Edmonton

400-9939 Jasper Avenue
Edmonton, Alberta
T5J 2W8
423-4102

Legal Aid Society of Canada

Calgary

900, 815 - 8th Avenue S.W.
Calgary, Alberta
T2P 3P2
297-2260

Edmonton

#300, 10320 102 Avenue
Edmonton, Alberta T5J 3H1

Calgary Legal Guidance

Suite 100 - 615 MacLeod Trail S.E.
Calgary, Alberta
T2T 4T8
234-9266

Student Legal Assistance

Calgary 220-6637
Edmonton 432-2226

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