SEXUAL HARASSMENT COMPLAINTS TO THE CANADIAN HUMAN RIGHTS COMMISSION

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ABSTRACT

Sexual harassment is a common form of gender discrimination experienced by Canadian women. This study examines dispositions, remedies, length of time to case resolution and the amount of monetary compensation awarded in sexual harassment complaints reported to the Canadian Human Rights Commission (CHRC). An analysis of how various factors affect these complaint outcomes delineates the advantages and disadvantages of dealing with women's human rights violations using this process. Policy and research recommendations are also outlined.

An analysis of 453 sexual harassment complaints filed by women against both corporate and individual respondents between 1978 and 1993 is presented in this report. Of the total sample, there are 295 complaints against corporate respondents and 158 against individual respondents. Descriptive and multivariate analyses illustrate how the complaints-based model is working and identify the factors for predicting various dispositions and remedies.

Three types of dispositions are available in sexual harassment complaints: formal settlement, dismissal or "no further proceedings" (often informal settlements). Complaints against corporate respondents are more likely to be formally settled than complaints against individual respondents. In general, when the complainant experiences psychological distress and when *quid pro quo* harassment occurs, the complaint is formally settled. Complaints take an average of two years to reach a disposition. Formal settlements reached through conciliation require the longest time to resolve. Monetary compensation is the most common remedy for complaints settled formally or informally. Corporate respondents pay more monetary compensation for poisoned environment harassment than *quid pro quo* harassment.

The results of this report demonstrate that workplace sexual harassment is a pervasive problem for women in Canada. This comprehensive analysis of the CHRC complaint process suggests that improvements in time to case resolution and ease of reporting without repercussions should be important components of future policy agendas promoting the status of women in Canada.

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EXECUTIVE SUMMARY

Women's vulnerability to sexual harassment in the workplace is pervasive and widespread. Currently, the Canadian Human Rights Commission (CHRC) follows a complaints-based model to protect women from discrimination and harassment at work. This model was implemented in the late 1970s to encourage women who experience sexual harassment to file formal external complaints against corporations and individuals explicitly engaging in, or implicitly allowing, the sexual harassment to occur. This report has four primary goals.

- Identify the dispositions that result from sexual harassment complaints.
- Determine the predictors of the length of time to case resolution.
- Describe the types of remedies used to resolve these complaints.
- Determine the predicting factors for various dispositions and remedies, including the amount of monetary compensation received by a complainant.

This research examined 453 sexual harassment complaints filed by women against corporate and individual respondents between 1978 and 1993. During this period, there were 295 complaints filed against corporate respondents and 158 complaints against individual respondents. Complaints could result in a settlement, a dismissal, or "no further proceedings" (including private settlements).

Disposition of Complaints

Complaint dispositions differ between corporate and individual respondents.

- Complaints against corporate respondents are more likely to be formally settled through conciliation while a disposition of "no further proceedings" is more likely to occur in complaints against individual respondents.
- About one third of all complaints are dismissed.
- Several factors increase the probability that a complaint will result in a formal settlement imposed by the CHRC:
  - psychological distress experienced by the complainant;
  - evidence of *quid pro quo* sexual harassment;
  - conciliation; and
  - complaints filed after the *Robichaud* v. *Brennan* case which established employer liability for sexual harassment complaints.

Time to Resolution of Complaint

Complaints are resolved, on average, two years after they are initially filed.

- For both types of respondents, formal settlements are reached more slowly than dismissals or complaints that end in "no further proceedings."

- Complaints that go through conciliation take the longest to reach a resolution.

- Complaints against corporations with a history of prior allegations, complaints involving more than one harasser and complaints against employing organizations with higher annual sales also take longer to resolve.

Remedies for Settled Complaints

The four most common remedies employed in sexual harassment complaints, settled formally and informally, are monetary compensation, a letter of apology, harassment-sensitivity classes and the development or amendment of harassment policies in the workplace.

- Monetary compensation is awarded more often against corporate respondents when there is a prior history of allegations, in cases of poisoned environment harassment and when conciliation occurs. In addition to these last two factors, complaints against individual respondents are also more often resolved through monetary compensation when the complainant is no longer in the job and when multiple harassers are identified.

- Although letters of apology are more likely to be ordered against individual respondents, corporate respondents have been required to provide these more frequently in complaints filed between 1990 and 1993.

- Individual respondents who harassed more than one individual and corporations involved in poisoned environment harassment are more often ordered to take harassment-sensitivity classes.

- Corporate respondents were required to develop policies more often between 1978 and 1983. This is likely due to the relative "newness" of sexual harassment legislation during this period.

Amount of Monetary Compensation Awarded

Monetary awards compensate the complainant for lost wages, legal expenses and "hurt feelings" as a result of the sexual harassment.

- The average amount awarded for complaints that end in "no further proceedings" is almost double that awarded in cases formally settled by the CHRC.

- Complainants who are no longer in their jobs when the complaint is filed and who work in female-dominated industries receive the highest amount of monetary compensation from corporate respondents.

- Corporate respondents pay less money to complainants if the harassment is *quid pro quo* rather than poisoned environment harassment.

Research and Policy Recommendations

- Conciliation after a CHRC investigation should not be abandoned because, while the process may be slower, the outcomes are better for complainants.

- Immediate relief needs to be provided to women experiencing harassment and attempting to address the situation through the CHRC.

- There needs to be more use of structural remedies that alter the culture of the workplace. While it is important to provide compensation for those complainants who have already suffered sexual harassment in the workplace, it is equally important to reduce the amount of future sexual harassment that may occur.

- A national study should be undertaken to assess the content and effectiveness of current sexual harassment policies and processes in employing organizations.

- Research attention needs to focus on the benefits and costs of mediation as a quick and effective solution to sexual harassment complaints. Currently, early mediation for such complaints is the latest proposed solution, but there is little (if any) research in this area.

1. INTRODUCTION

Women who file complaints to the Canadian Human Rights Commission (CHRC) do so with little knowledge about possible outcomes for their complaints. This report describes and analyzes a specific group of human rights complaints to the CHRC: sexual harassment complaints by women.[1]

We provide detailed information about CHRC processes and outcomes. These results can be compared, in the future, to other models of complaint resolution to discover the types of complaint processes that lead to better remedies for women. We also examine how long it takes for complaints to reach a disposition and the types of remedies women can expect from this process. We conclude with research and policy recommendations that document the additional information required to assess, more adequately, the complaint process, to highlight areas in which the Canadian Human Rights Commissions' process has been effective and to suggest ways for improving the process for future complainants. We collected data for this report from 453 sexual harassment complaints to the CHRC between 1978 and 1993.

Background

In 1978, the CHRC recognized sexual harassment as a form of discrimination prohibited under the *Canadian Human Rights Act*. Since then, studies have documented the extent of sexual harassment in Canada. A 1992 survey of Canadian women found that 43 percent experienced sexual harassment in the preceding year (Gruber 1998; see also Welsh and Nierobisz 1997; CHRC 1983). All women, including those in professional occupations and blue-collar jobs, face the risk of sexual harassment (Backhouse and Cohen 1979).

To date, most research on outcomes and resolutions that arise from sexual harassment experiences is based on surveys of sexual harassment victims and has tended to focus on the informal coping mechanisms used by women subjected to sexual harassment (e.g., Tangri et al. 1982; Gruber and Smith 1995). This research shows that women are more likely to avoid their harassers than to report the harassment even when internal complaint procedures or external forums, such as the CHRC, are available to them. Although these studies lay the groundwork for understanding the types of policies needed to combat sexual harassment, they only touch on the issue of formal complaint resolution and what factors lead to various dispositions.

Researchers are now beginning to examine which policies are effective for sexual harassment complaints (Cleveland and McNamara 1996; Gutek 1996; Rowe 1996). Because of the relative "newness" of sexual harassment as a legal form of discrimination (Backhouse and Cohen 1979; MacKinnon 1978), most of these analyses are based on conceptual frameworks or anecdotal evidence derived from consultations with employing organizations. In their analysis of university employees, Lindenberg and Reese (1996) found that many employees are dissatisfied with their workplace sexual harassment policies and, in particular, are

concerned with confidentiality, fairness and perceived lack of organizational response. In general, these recent sexual harassment policy evaluations should be "considered hypotheses in a field with virtually no large-scale research" (Rowe 1996: 243).

Given the lack of research on harassment policies in general, it is not surprising that few studies have examined external complaint procedures. The few studies available are based primarily on U.S. court and federal agency data (e.g., Coles 1986; Terpstra and Baker 1988). These studies document the characteristics of complaints. They also provide some understanding of the factors that are important in settling complaints.

Research on sexual harassment complaints in Canada is even more limited. Although the CHRC and provincial human rights commissions are critiqued for being slow moving and unresponsive to complainants' needs (Grahame 1985; Howe and Andrade 1994), few comprehensive studies on complaints to the CHRC are available. Frideres and Reeves (1989) examined sex- and race-based complaints. They found important differences between complaints of individual discrimination, such as sexual and racial harassment, and complaints relating to systemic discrimination. Complaints of harassment tend to rely primarily on the testimony of individuals, while systemic discrimination complaints rely on formal evidence such as payroll and personnel documents. Subsequently, reliance on individual testimony that may change over time or witnesses that cannot be located, in part, results in lower rates of settlement for harassment complaints compared to systemic discrimination complaints.

The CHRC plays an important role in adjudicating human rights complaints for women. In many ways, one might consider this quasi-judicial agency to be the "court of last resort" for sexual harassment complainants in federally regulated workplaces. In Canada, complainants are not able to file civil lawsuits against their employer. These lawsuits are a potential avenue for complainants in the United States and a mechanism that can serve to bring employers in line, especially when multi-million dollar damages are awarded. This is not to say that the U.S. civil liability framework is preferred. Rather, it merely highlights the importance of both federal and provincial human rights commissions for protecting human rights. In the case of sexual harassment, complainants often turn to the CHRC after exhausting internal or union complaint procedures. When the federal human rights commission does not function properly, complainants have few options in attempting to have their human rights violations remedied.

Filing a Complaint with the CHRC

Once a complaint is filed with the CHRC, an investigation is conducted. According to official CHRC documentation (CHRC 1998), a human rights investigator will ask the complainant for evidence to support the complaint. The investigator may also gather evidence from co-workers and other individuals who have pertinent information. During the investigation, the CHRC will attempt to settle the complaint. Once an employer or individual is informed that an investigation has begun, he or she may offer to make amends. If the complainant is satisfied, then the complaint will be settled,[2] the investigation ceases and the complaint is closed.

Following an investigation in which the complaint is not settled, the investigator supplies commission members with a report based on the evidence collected. Complainants and respondents also may make submissions based on the investigation report. These submissions, along with investigation reports, are considered by the Commission in making its decisions. Based on this information, commissioners then decide among the following options:

- a conciliator is appointed to resolve the complaint;
- the complaint is referred to the human rights commission; or
- the complaint is dismissed because there is not enough evidence demonstrating discrimination or harassment.

Finally, in terms of settlements, the focus is on remedying the situation and making the complainant "whole" by compensating for "hurt feelings" or other damages resulting from the harassment or discrimination. The whole process is remedial, not punitive.

While the CHRC provides a straightforward complaint procedure, it is important to remember that filing a formal complaint is still a rare and costly event for victims of sexual harassment. Since the early 1980s, research has consistently shown that women who have experienced sexual harassment infrequently confront the harasser or report the behaviour to someone in authority. The number of women who do file a grievance or complaint is even smaller. Various studies examining a wide range of occupations and work environments reveal a consistent pattern. While approximately half of all female employees experience sexual harassment, less than one quarter report it to an authority and fewer than one in 10 actually file a formal grievance (Fitzgerald et al. 1995; Gruber and Smith 1995). When complainants do file a report, however, there is a cost to reporting harassment. Welsh and Gruber (1999) found that reporting sexual harassment has an independent negative effect on women's work and personal lives, above and beyond the effect of the sexual harassment.

Women reporting the harassment experience more adverse outcomes than non-reporters. Thus, women who do report their sexual harassment to the CHRC, which is the focus of our study, have shown tremendous perseverance in trying to find a remedy for their harassment experiences. As a result, it is crucial that the CHRC remove any additional barriers that prevent the reporting of sexual harassment. CHRC procedures should not contribute to the adversity these women experience when they do file a complaint. The findings of the 1998 report by Renée Dupuis on CHRC sexual harassment complaint procedures point to some recommended changes to CHRC procedures. This report should be considered a complementary companion piece for our report. In our research, by examining the outcomes, remedies and amount of time to case resolution of sexual harassment complaints to the CHRC, we gain insight into how the CHRC helps women and where they may inadvertently place further roadblocks in the way of women's pursuit of their human rights.

2. DATA AND METHODS

We collected data from sexual harassment complaints lodged with the Canadian Human Rights Commission between 1978 and 1993. We assembled the data by reading and coding information from investigators' case files. These files contain detailed records of the sexual harassment, investigation process and complaint resolution. Sexual harassment complaints were identified using the designation developed by the CHRC that classifies sexual harassment complaints under section 14 of the *Canadian Human Rights Act* and under the grounds of sex or sexual harassment. All complaints coded for analysis were filed in this manner. Only those complaints that were closed (e.g., dismissed, "no further proceedings," settled) by December 1995 were coded. Complaints still in process were not coded.

After reading through several investigator reports, we developed a coding instrument that captured details about the complaint including the type of organization where the alleged harassment occurred, the type of harassment behaviour and the closure resolution. Supporting documents and letters found in investigator reports were used to clarify information. Due to the confidential nature of these reports, all the complaints were coded by the first author and two graduate research assistants at the CHRC offices in Ottawa, under guidelines laid out in a contract between the CHRC and the first author. The 453 complaints used in our analysis represent the total population of workplace sexual harassment complaints against corporate and individual respondents filed by female complainants with the CHRC between 1978 and 1993 and closed by 1995. Not included are sexual harassment complaints against service providers.

Prior to the mid-1980s, complaints could be filed against corporate respondents only. These complaints contained allegations against the employer for not providing a harassment-free workplace and for differential treatment. The complaints also included allegations against specific individuals in the workplace for engaging in harassing behaviours. Yet in some circumstances, the employer would not be held liable for the harassment by an employee.[3] Hence, in the late 1980s, the CHRC began to take complaints against individual respondents. Most of the complaints against individual respondents were filed after 1989, with only 16 filed between 1985 and 1988. Because individual and corporate respondents are distinct, especially in terms of the types of potential remedies, analyses are done separately on complaints against individual and corporate respondents.

Descriptive Statistics

This section describes the characteristics of both the corporate respondent sample (n = 295) and the individual respondent sample (n = 158). Variable descriptions are provided in Appendix A. We describe corporate and individual respondents separately because, as our analysis shows, there are some striking differences between these types of respondents in terms of complaint disposition and remedies.

Over one third of the complainants in the corporate respondent sample and close to 40 percent in the individual respondent data experienced some form of psychological distress or damage as a result of the sexual harassment. Most complainants in both samples (about 70 percent) were no longer in the job where the harassment occurred when the complaint was filed with the CHRC. A large proportion of these women had quit, been fired or forced to resign. A smaller number were on sick leave, transferred to another position or demoted.

Close to half of the cases against corporate respondents were filed between 1990 and 1993. This may reflect both public awareness of sexual harassment in the early 1990s as well as the importance of the 1989 Canadian Supreme Court decision in *Janzen* v. *Platy*. In *Janzen*, the Supreme Court confirmed that sexual harassment is a form of sex discrimination.[4] In contrast, most complaints (87 percent) against individual respondents were filed during this later period, in part, because the CHRC did not accept complaints against individuals until the late 1980s.

In the corporate respondent sample, about 41 percent of the cases involved more than one harasser, and over one quarter involved more than one complainant. The proportion of multiple harassers and victims was lower for individual respondents, 30 and 20 percent respectively. In both samples, most complaints involved alleged harassers with supervisory authority over the complainant. This includes both those with a formal title of supervisor as well as instructors or other workplace leaders. Nearly 25 percent of the complainants in the corporate sample and over half of the complainants in the individual respondent data held temporary or probationary positions, suggesting some organizational vulnerability for these individuals. Overall, less than one quarter of the complainants were in a managerial or professional position; most were in what would be referred to as pink- or blue-collar jobs.

The type of harassment experienced by complainants was evenly split between *quid pro quo* sexual harassment and poisoned environment harassment for both corporate and individual respondents. *Quid pro quo* harassment involves unwanted sexual attention that may include being stared at or inappropriately touched. In other words, this type of harassment involves behaviours that are overtly sexual and directed at particular individuals. Poisoned environment harassment includes both gendered and sexually derogatory comments and actions that may permeate the workplace. While some of the harassment in this latter group of cases was personally directed at particular individuals, other harassment, such as the presence of sexual posters and general comments about the inability of women to perform jobs, was not.

On a per-province basis, about 40 percent of the employing organizations had had prior sexual harassment complaints filed against them. Among this group, the average number of previous complaints was about six or seven within the province where the employing organization was located. Nationally, about 56 percent of the employing organizations had previous complaints filed against them, with the average number of previous complaints among this group being about nine or 10. This figure represents the total number of complaints filed against a company regardless of the province in which its branches were located.

During the complaint process, the CHRC has the option of sending a case to conciliation in an effort to facilitate an agreement between or among the parties involved. This generally occurs when the investigation found evidence of sexual harassment and where there was some likelihood the complainant and respondent might reach a settlement. Close to one quarter of the corporate cases were sent to conciliation while about 20 percent of the complaints against individual respondents were directed through that process.

For both the individual and corporate respondent sample, over half the complaints were filed against private, non-governmental organizations (NGOs).

In the corporate sample, just over half the complaints originated from industries that had an equal proportion of male and female employees. About 36 percent came from male-dominated industries (where less than 30 percent of the employees were female) while 10 percent were from female-dominated industries (where more than 60 percent of the employees were female).

The numbers varied slightly for individual respondents. In these cases, close to 60 percent of the complaints originated from industries with an equal proportion of male and female employees. About 27 percent came from male-dominated industries while 16 percent were from female-dominated industries.

The average size of the employing organization for individual and corporate respondents was 78,528 and 56,949 employees, respectively. Annual sales, on average, were approximately $9,387,743,798 for corporate respondents and $3,947,407,846 for individual respondents.[5]

3. RESEARCH FINDINGS

We now turn to our research findings. We begin with a discussion of the disposition of complaints, followed by an analysis of the average amount of time to resolution for complaints. The third, and final, component of our analysis focusses on remedies for settled complaints. We provide a separate analysis of the amount of monetary compensation the complainants received.[6]

Disposition of Complaints

The CHRC complaint process can lead to various types of dispositions. Some complaints are settled in the course of an investigation or as a result of conciliation. Some are dismissed while others proceed to a human rights tribunal. Settlements are agreed to by the various parties in the complaint and approved by the CHRC. Settlements usually result in some type of remedy for the complainant. Remedies include monetary compensation for the harassment, payment of lost wages, a letter of apology or an amendment of the employer's sexual harassment policy. The next most common disposition is dismissal, followed by "no further proceedings." The latter occurs when the CHRC does not pursue a complaint because it has been withdrawn or the matter resolved as a result of a private settlement between the complainant and the respondent.

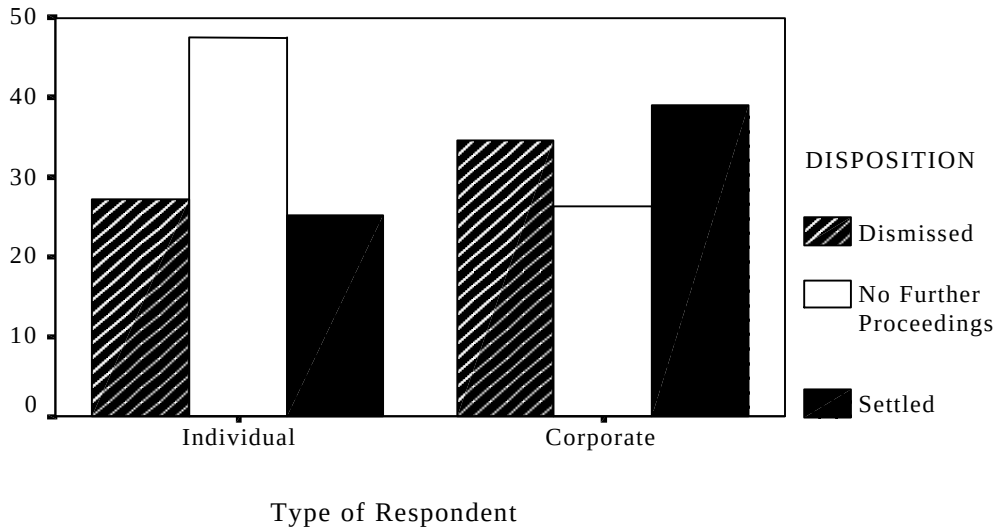
A different disposition pattern exists for complaints against corporate and individual respondents. (See Figure 1.) Complaints against corporate respondents are significantly more likely to be settled than complaints against individual respondents (39 and 25 percent, respectively). The higher settlement rate for corporate respondents may be due to legal liability issues and the CHRC's remedial mandate. That is, corporate respondents are in a position to alter the work environment by enforcing their sexual harassment policy or requiring their employees to take harassment-sensitizing classes. Individual respondents, while able to apologize for their behaviour, cannot necessarily provide a more "structural" remedy for the workplace as a whole. Complaints against individual respondents are significantly more likely to result in dispositions of "no further proceedings" compared to corporate respondents. (See Figure 1: 48 percent of individual respondents and 26 percent of corporate respondents.) Often, when the complainant settles with the corporate respondent, remedies involving the individual respondent are not pursued. Finally, there is no significant difference between individual and corporate respondents in the rate of dismissal: almost 35 percent of complaints against corporate respondents are dismissed compared to 27 percent against individual respondents.

What Factors Predict the Settlement of Complaints?

Overall, variables related to legal and CHRC procedures predict complaint settlement. In earlier research on the sexual harassment complaint data, we (Welsh et al. 1999) found that complaints to the CHRC are more likely to be settled if the complainant experienced psychological distress, experienced *quid pro qu*o harassment as opposed to poisoned environment harassment, and if the complaint was lodged after the Review Tribunal

overturned the lower tribunal's decision in *Robichaud* v. *Brennan* in 1983. (This case established employer liability for sexual harassment complaints.) Complaints sent to conciliation are also more likely to be settled than other complaints. According to the CHRC, this can be interpreted as showing that the CHRC "makes good decisions" about the complaints that will result in settlement. This finding highlights the role of CHRC organizational processes in complaint outcomes.[7] We address the role of conciliation in our discussion of the amount of time taken to resolve complaints.

Figure 1: Dispositions by Type of Respondent
(Corporate and Individual Respondents, N = 453)



Welsh et al. (1999) point out that one troubling aspect about settled complaints is the positive relationship between complainants' acknowledgement of psychological distress and complaint settlement. On the one hand, this relationship is consistent with Canadian case law. Since the 1980 Ontario Board of Inquiry in *Bell* v. *Flaming Steer Steakhouse*, the complainant's psychological damage is regarded as a marker of harassment that is considered a condition of employment. Yet, it is important to note that the role of psychological distress in sexual harassment complaints is the focus of some legal debate. In the United States, since the 1993 Supreme Court decision in *Harris* v. *Forklift Systems*, the court has attempted to move away from proving psychological injury in complaints of poisoned environment harassment. Based on the results of our earlier analysis, it appears that in Canada experiencing sexual harassment and/or facing a poisoned work environment is not enough. Instead, complainants who mention some type of psychological consequence due to the sexual harassment are more likely to reach a settlement. It appears that for sexual harassment complaints, women who produce an image of themselves as psychologically damaged are more likely to gain a settlement for their complaints. According to Carol Smart (1995), this is an example of how the law is gendered, in that it produces a particular image of the sexual harassment victim as

psychologically unstable. Overall, however, it is the legally relevant and organizational processing factors, such as conciliation, that predict what complaints will be settled. This leads us to believe that the CHRC is using appropriate criteria, albeit within a gendered legal context.[8] Given the regular occurrence of psychological distress for sexual harassment victims, our research also leads us to concur with the recommendations of Dupuis (1998: 27) that the CHRC include a supplementary measure in settlements that would "oblige the respondent to defray the costs of psychological support for the victim, where appropriate."

Length of Time to Resolution of Complaint

Researchers and activists have levelled criticisms against human rights commissions in Canada over the time it takes to resolve such complaints (Grahame 1985; Howe and Andrade 1994). Human rights commissions, in general, and the CHRC in particular, are seen as slow-moving institutions that do not respond in a timely manner to the needs of complainants.[9]

On average, it takes two years to resolve complaints. The time to resolution varies by the type of resolution. (See Figure 2.) Complaints resulting in a settlement take the longest: complaints against corporate respondents take almost two and a half years (30 months) and complaints against individual respondents take 26 months. For complaints against corporate respondents, dismissals or "no further proceedings" are reached after about 20 or 22 months. For complaints against individual respondents, dismissals are reached, on average, in 23 months, while "no further proceedings," resolutions are reached in about 19 months.

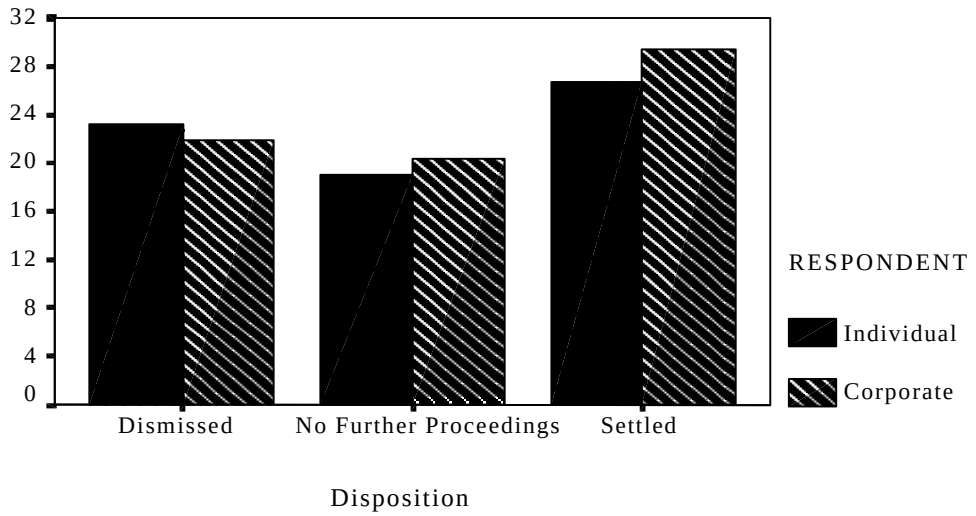
What Factors Predict Time to Complaint Resolution?

We performed multiple regression analyses to determine the likelihood of certain types of complaints taking longer to reach a resolution for the corporate respondents sample only.[10] Appendix B contains the results of this analysis. We briefly summarize the results below. Complaints filed during the middle years of our study (1984 to 1989), those against respondents with a history of prior complaints and those cases sent to conciliation were likely to take more time to reach a resolution. As well, if more than one complainant was involved in the case, time to resolution increased. In addition, as annual sales for an employing organization increased, so did the time to case resolution. It is possible that employers with higher sales or "deep pockets" may be able to stall or delay CHRC proceedings. For example, companies can accomplish this by filing appeals of CHRC decisions. A second possible explanation is that higher sales are a proxy for having (and being able to afford) full-time human rights staff that may make it possible for more detailed responses to CHRC complaints. Further research is required, however, to explore the reasons behind this finding.

As indicated above, complaints take approximately two years to reach their final disposition. Since testimonial and circumstantial evidence are the most common type of evidence in sexual harassment complaints, complaints that take a long time to settle run the risk of losing crucial evidence due to inaccurate memory on the part of witnesses (Dupuis 1998: 24). One contributing factor may be the increased time it takes for a case to go through the conciliation process. This conundrum highlights the problem faced by the CHRC. The Commission is criticized for being too slow, yet also faces criticism if the public perceives complaints as not being handled fairly. However, conciliation, after an investigation, appears to offer the best

chance for fair remedies but at the cost of a longer process. Part of the time taken to get to resolution may be due to the fact that the case must go before the Commission twice for a decision—once after investigation and then to approve the settlement. In terms of positive settlements for complainants, more time to resolve the complaint may be needed. Dupuis (1998: 24) also points out that during the investigation as much evidence as possible needs to be collected to avoid problems of inaccurate memory and missing witnesses. This means more time may be needed to investigate fairly and settle sexual harassment complaints. As Johnson and Howe state, "rushed justice is often justice denied" (1997: 16).[11]

Figure 2: Average Time to Resolution by Disposition
(Corporate and Individual Respondents, N = 453)



One final factor for consideration is that most complainants have quit their jobs, been fired or taken sick leave by the time their cases are filed with the CHRC. For these complainants, the two-year (or more) average time to resolution is too long. It brings with it added financial hardship and forces complainants to wait for any remedies that may be forthcoming. Also problematic is the lack of immediate relief in their harassment situation. Some may say it is not the role of the CHRC to stop the harassment in the short term, but rather to provide remedies for anti-social conditions in the long term. However, it is necessary to point out that women in Canada have little recourse for immediate relief from sexual harassment or other human rights violations. By forcing complainants to wait for over two years for a disposition, the CHRC hampers women's abilities to move on from their harassment experiences. As research shows, for some women, the sexual harassment complaint process adds to the harm of the initial harassment (e.g., Welsh and Gruber 1999; Stambaugh 1997).

Remedies for Sexual Harassment Complaints

In this section, we examine, in particular, the difference between settlements and remedies

that come earlier in the process compared to those that come later.

The CHRC uses several remedies to address sexual harassment complaints. The four most common are letters of apology from the corporate or individual respondent, monetary compensation, development of, or amendment to, a sexual harassment policy and harassment-sensitizing classes. Other less common remedies include transfer of the complainant to a new position, distributing the company's sexual harassment policy to all employees, posting a formal letter of apology and setting up appropriate procedures so complaints are handled quickly. We are not able to evaluate whether or not respondents view these remedies favourably. Those interested in this issue are referred to Dupuis' discussion (1998: 19-20) of the mismatch between sexual harassment complainants' expectations and the remedies available. The analyses focus on the four most common remedies: letters of apology, monetary settlement, harassment-sensitizing class and development of sexual harassment policies. This analysis also examines only those complaints that were officially endorsed by the CHRC or reached an informal or private settlement. If we think of remedies from "no further proceedings" resolutions as similar to privately mediated settlements, we gain some insight into remedies outside the CHRC. Comparing these remedies to those from CHRC officially endorsed settlements may highlight where the complainants stand to gain (or lose) from settlements occurring outside the CHRC.

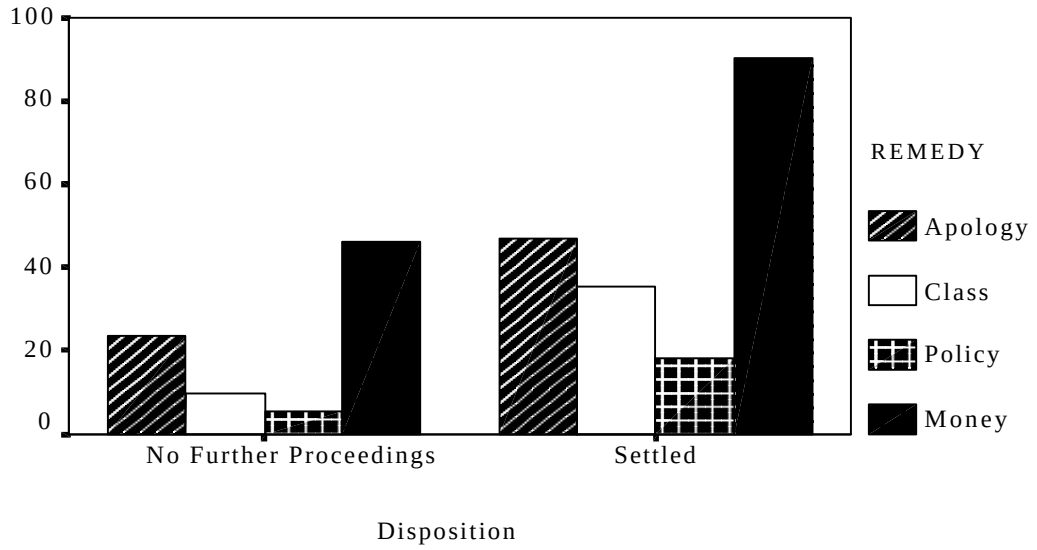
Figure 3 presents the four types of remedies (letter of apology, harassment-sensitizing class, creation or amendment of sexual harassment policy, and monetary compensation) for settled and "no further proceedings" complaints. Monetary compensation is the most common type of remedy for both settled and "no further proceedings" complaints (approximately 90 percent vs. 48 percent respectively). A letter of apology to the complainant is the second most common remedy for both types of complaints. This is followed by harassment-sensitizing classes. Creation or amendment of a sexual harassment policy is the least common remedy, occurring in about 18 percent of the settled complaints and five percent of the "no further proceedings" complaints.

Significant differences exist in the type of remedies for settled and "no further proceedings" complaints. Settled complaints, where the commissioners have approved the settlement, are more likely to lead to monetary compensation, a letter of apology and harassment-sensitizing classes than are "no further proceedings" settlements (or what can be called informal settlements).

Officially sanctioned settlements also include a wider variety of remedies compared to informal settlements. More than one remedy is applied in almost two thirds of officially sanctioned settlements, while only one third of the informal settlements have more than one remedy. Based on these findings, the CHRC appears to be more effective at ensuring comprehensive or systemic remedies than would occur with negotiated informal settlements. As an example of this, for both individual and corporate respondents, officially sanctioned settlements are significantly more likely to include harassment-sensitizing classes than informal settlements. For respondents who negotiate informal settlements, this educational and structural remedy may be avoided. Also at issue is the fact that human rights processes

were initially designed to be “lawyer-less,” thus reducing the expense for the complainant and respondent. While we have no information on the number of lawyers or other outside legal assistance used in complaints, it is possible that those complainants who mediate or negotiate outside of the CHRC conciliation process may be at some disadvantage when it comes to remedies. Future research needs to examine whether or not legal representation makes a difference for remedies. In the following section we look at the four types of remedies more closely.

Figure 3: Remedies by Disposition
(Corporate and Individual Respondents, N = 248)



Letters of Apology

Letters of apology from the respondent to the complainant occur in about 32 percent of complaints against corporate respondents and 48 percent of complaints against individual respondents. (See Figure 4.) Letters of apology are most likely to occur in complaints against corporate respondents when the complainant is still in the job where the harassment occurred, is a manager or professional, and is complaining of poisoned environment harassment. (See Table 1 for a description of the significant effects.) Letters of apology appear to be a “newer” remedy for corporate respondents in that they are more likely to occur in the 1990 to 1993 period. (See Figure 5.)

Conciliation also results in significantly more letters of apology than complaints settled without conciliation. (See Table 1.) For individual respondents, letters of apology occur in slightly different complaints. This remedy is likely when there are no prior complaints against the employing organization, when the complaint is settled through conciliation or when the harassment involved multiple harassers and complainants.

Table 1: Type of Remedy by Significant Factors[a]
(Individual and Corporate Respondents)

		Remedy			
		Monetary Compensation	Letter of Apology	Harassment-Sensitizing Class	Creation of Policy [b]
Complainant out of job	Individual Corporate	+ 	 -		
Poisoned environment	Individual Corporate	+ +	 +		
Complaint opened 1978-1983	Individual Corporate				 +
Complaint opened 1990-93	Individual Corporate		 +		
Prior complaint	Individual Corporate	 +	- 		 -
Sent to conciliation	Individual Corporate	+ +	+ +	+ +	
Complainant is manager/ professional	Individual Corporate		 +		
Multiple harassers	Individual Corporate	+	+		
Others harassed	Individual Corporate		+	+	 +
Small organization	Individual Corporate				 +
Female-dominated industry	Individual Corporate	+ +	+ +		 +

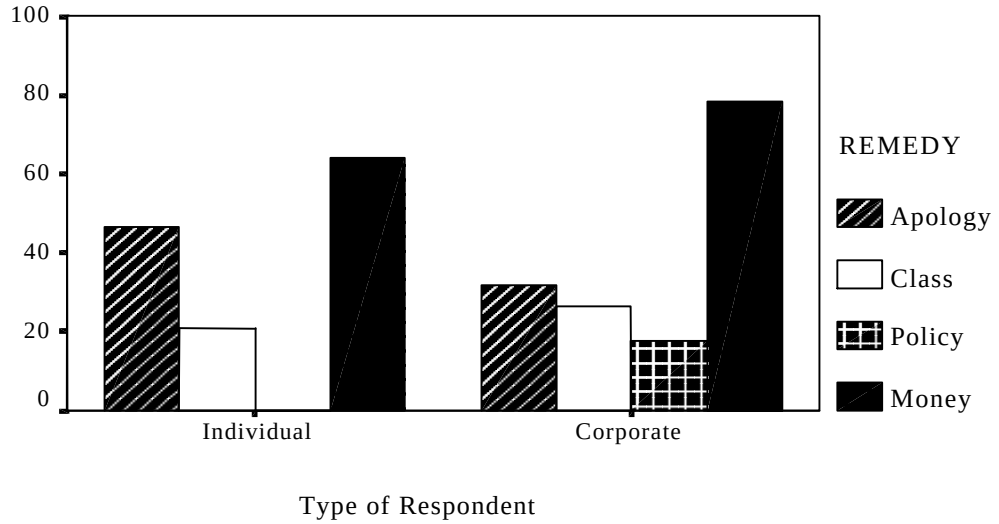
Notes:
[a] Positive signs indicate that a variable increases the odds that a particular type of remedy will be used while negative signs indicate that a particular variable decreases the odds that a type of remedy will be used.
[b] Policy creation/amendment is not a relevant remedy for individual respondents.

Sexual Harassment-Sensitizing Classes

Harassment-sensitizing classes are invoked for about 27 percent of the complaints settled against corporate respondents and 20 percent against individual respondents. (See Figure 4.) For both individual and corporate respondents, complaints that go through conciliation are more likely to result in harassment classes than other complaints. For corporate respondents, classes are more likely to be used when complaints involve poisoned environment

harassment. Complaints against individual respondents result in harassment classes when others in the workplace have been harassed. This is indicative of a chronic problem on the part of the individual respondent and is best remedied by education and awareness about what is sexually harassing behaviour.

Figure 4: Remedies by Type of Respondent
(Corporate and Individual Respondents, N = 243)

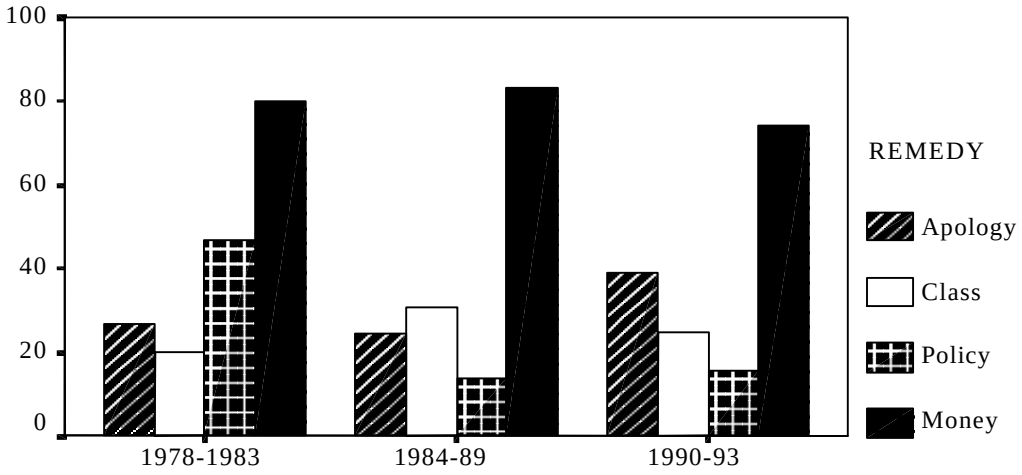


Harassment Policy Implementation or Amendments

Creation of, or amendments to, sexual harassment policies occur in about 18 percent of the complaints. (See Figure 4.) Policies were more likely to be a remedy in the early years of complaints, 1978 to 1983. (See Figure 5.) During this period, employers either had no policies or minimal policies in place. Clearly, in more recent years, policies have not been applied as frequently as a remedy. By the mid to late 1980s, most companies had some type of policy in place. In part, this is due to the 1985 amendment to the *Canada Labour Code* that made it mandatory for all federally regulated employers to adopt an internal sexual harassment policy. Although broad guidelines are given regarding policy content (e.g., that employees are entitled employment free of harassment, an explanation of how complaints may be brought to the attention of the employer), what is not known and what is needed is information about the types of policies and their effectiveness within organizations.[12] The existence of a policy does not mean it is effective. If a complaint has reached the CHRC that was not initially addressed by an organization's internal complaint policy, this may indicate a problem with the policy itself. Although more research is needed on what are effective sexual harassment policies, the CHRC could ask companies to evaluate and amend their policies to a greater degree than they are doing now. Related to this, corporate respondents with prior complaints against them are less likely to be asked to create or amend their sexual harassment policy. (See Table 1.) At first glance, this may seem counterintuitive. But it is likely that

corporate respondents with prior complaints were previously asked to develop a policy. Smaller organizations and organizations where others were harassed are more likely to be asked to develop or amend their policy than other organizations. In contrast to the other three remedies, conciliation does not make a significant difference for the creation of a policy.

Figure 5: Remedies by Year Opened
(Corporate Respondents, N=157)



Monetary Settlements

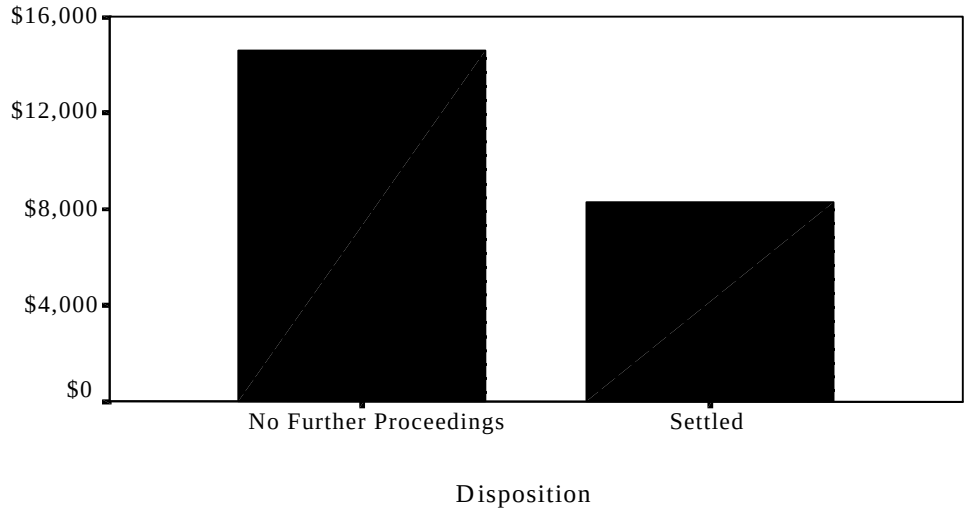
Seventy-eight percent of the settled complaints against corporate respondents and 66 percent of settled complaints against individual respondents result in a monetary award. (See Figure 4.) We also examined whether various factors were significantly related to monetary remedies. (See Table 1.) For complaints against corporate respondents, monetary compensation occurs more often for poisoned environment harassment, when there have been prior complaints against the employing organization and complaints going through conciliation. For complaints against individual respondents, complainants are more likely to be compensated when they are no longer in the job where the harassment occurred, when it is poisoned environment harassment, when there are multiple harassers and when the complaint goes through conciliation.

Amount of Monetary Compensation

How much money do complainants receive for successful sexual harassment complaints? For many complainants, money is an important part of the remedy since it may cover lost wages, legal expenses and compensation for “hurt feelings” or personal damages arising from the

sexual harassment. Because monetary settlements are a source of concern for both complainants and respondents alike, it is important to examine the relationship between characteristics of sexual harassment complaints and the amount of monetary settlements.

Figure 6: Average Amount of Money by Disposition
Average Amount of Money by Dispositions
(Corporate Respondents, N = 123)



To determine how much money complainants receive, we examine two types of settled complaints—those where there is a formal settlement sanctioned by the CHRC (Minutes of Settlement form included in file) and those where the complaint was listed as "no further proceedings" due to a private settlement between the complainant and respondent. "No further proceedings" settlements usually occur during the process of an investigation and do not involve a formal decision by the commissioners. For settled complaints, the average monetary compensation is $8,272.12. (See Figure 6.) This is not surprising given the limit of $5,000 for "hurt feeling" or damages for complaints to the CHRC during the 1978-1983 period.[13] For "no further proceedings" complaints or those resolved informally, the average amount of monetary compensation is significantly higher at $14,579.52. Reasons for the significant difference between these two types of complaints are discussed below.

What Factors Predict the Amount of Monetary Settlements?

Appendix C contains the results of a multiple regression analysis undertaken to determine if certain types of complaints increased the amount of monetary awards. Only the corporate sample was examined, due to the small number of monetary settlements in complaints against individual respondents. The results are briefly summarized here.

Three factors significantly increased the amount of money received in a settlement:

- if the complainant was no longer in the job where the harassment occurred;
- if the complainant was working in a female-dominated industry; and
- if the case reached a disposition of no further proceedings.

In contrast, the amount of money decreased if the type of harassment experienced by the complainant was *quid pro quo* harassment. Although much attention is paid to multi-million dollar lawsuits of harassment victims in the United States, the reality for these litigations is probably closer to the findings of Stambaugh (1997). In her interviews with harassment victims, she found that those who settled their lawsuits usually received "paltry awards averaging slightly less than a year's wages" (Stambaugh 1997: 35).

What Can We Conclude about Sexual Harassment Complaint Remedies?

For remedies as a whole, it appears that the CHRC directs more remedies at poisoned environment harassment than *quid pro quo* harassment. In part, this may be a function of liability issues. Poisoned environment harassment is more likely to involve multiple harassers and multiple harassment targets. And this type of harassment may permeate the workplace in a way that *quid pro quo* harassment does not. This is the difference between a workplace where sexual gestures and comments occur on a regular basis as opposed to an individual co-worker or supervisor making requests of one harassment target. Legally, corporate respondents are liable for the harassment, and the remedies available to the CHRC may fit better with poisoned environment harassment.

Our results also highlight how complaints going through conciliation are more likely to result in remedies of monetary compensation, letters of apology and harassment-sensitizing classes. More systemic remedies, including a variety of remedies and harassment-sensitizing classes, are more likely to occur in officially sanctioned settlements than in informal ("no further proceedings") settlements. And while informal settlements may lead to slightly higher monetary compensation for complainants, it appears to be at a cost of other remedies that may have a broader effect on the workplace as a whole. Complainants may not always see the need for systemic action and may simply wish to settle their complaint quickly (Dupuis 1998: 28). As well, another possible interpretation is that some companies agree to a higher pay out to end the situation quickly. In this way, they hope to avoid orders from the CHRC to incorporate structural or comprehensive remedies designed to change the workplace culture within their organization. Overall, the CHRC must balance the wishes of complainants with the CHRC's responsibility to remedy systemic discrimination and harassment.

4. POLICY RECOMMENDATIONS AND CONCLUSIONS

We now discuss some policy recommendations based on the results of our report. We follow this with a discussion of future research needed to evaluate the CHRC and alternative complaint models.

Policy Recommendations

1. *We recommend that conciliation, after an investigation, is not abandoned.* Although this process may be slow, it works. Our research shows that conciliation, while increasing the time to resolution, leads to more systemic remedies that have the potential to alter harassment-prone workplace cultures than do remedies in informal settlements. Keeping conciliation after the investigation is also key. This is an important point about mediation. Conciliation works because there is an investigation and, hence, there is something to mediate. Yet, in these times of fiscal constraint and overloaded human rights dockets, many human rights commissions are moving to early resolution procedures or early mediation (Johnson and Howe 1997). Yet, if the complaint is still contested by the respondent, mediation may be difficult. As well, early mediation and conciliation may become more a tool of clearing the docket than reaching good settlements. Related to this, allowing too much discretion in the decision making of front line human rights officers could lead to inconsistent decisions. We repeat our earlier quote, "rushed justice may be justice denied" (R. Dworkin 1978, quoted in Johnson and Howe 1997: 19).

2. *To overcome the problem of effective but slow justice, more needs to be done to give female complainants immediate relief from their harassment.* The CHRC, in its current role, does not have the ability to stop harassment immediately nor remove problem individuals from the workplace. As a result, there is a need to provide resources outside the CHRC, such as including sexual harassment in provincial and federal occupational health and safety legislation. This would allow women to demonstrate that they work in a dangerous workplace and need immediate action to make it safe.

3. *We recommend that the CHRC regularly use a variety of remedies.* As it stands now, monetary settlements are the most common remedy. These should not be abandoned, but it should be recognized that most monetary settlements provide marginal compensation and may not be high enough to act as deterrents. We encourage the increased use of systemic remedies that alter the culture of the workplace, such as requiring employers to re-evaluate their sexual harassment policies, providing training to employees, supervisors and human resource managers that handle sexual harassment complaints and posting formal apologies for the harassment. Recent social science research shows that companies with proactive sexual harassment policies and procedures that inform and educate their employees about harassment, reduce the occurrence of poisoned environment harassment (Gruber 1998). Remedies that involve the whole workplace, not just the individuals involved, have the potential to reduce dramatically the amount of sexual harassment (and other types of harassment) found in workplaces.

Our results show that corporate respondents with prior complaints against them are less likely to be asked to amend their sexual harassment policy than respondents with no complaints against them. Respondents with a history of harassment problems need to re-evaluate their policies and procedures. Having a policy is not enough. It must be one that is effective. While we collected data on prior offences, it is not clear if this information is readily available to CHRC staff and commissioners. If not, this information should be collected as part of the case management system. Knowing about prior complaints of a similar nature will provide important information for commissioners' decision making at the remedy stage of the CHRC complaint process.

Recommendations for Future Research

1. *We recommend a national study of a sample of organizations to assess the content and effectiveness of sexual harassment policies and processes.* Our study has shown that, in the early years of our study (1978-1983), the Canadian Human Rights Commission attempted to ensure that companies implemented harassment polices and processes for their employees. This trend has declined in recent years which may be due to the fact that most companies, larger organizations at least, now have such programs in place. However, having these programs is one issue while their effectiveness is another. Little research has been done on what constitutes an effective policy. This is a crucial missing piece in our understanding of what it takes to remedy sexual harassment.

2. *Currently, early mediation is the latest proposed solution for quickly and effectively handling sexual harassment complaints*. Yet, there is little (if any) research on the types of settlements achieved through mediation, how complainants and respondents view the process, and the costs of the process. (In some instances, complainants may need legal representation.) Our research hints at some of the problems with mediation. While informal settlements may result in slightly higher monetary compensation, these settlements generally do not result in the complainants getting their job back. Moreover, they seldom result in structural workplace remedies, such as harassment-sensitizing classes and policy evaluation, that will ensure future workers are not subjected to sexual harassment.

   Evaluations of both the employer and the human rights commission mediation are needed. For example, the CHRC has an early resolution procedure. Our data did not allow us to tap into this issue. But future research should compare these types of settlements to those that follow an investigation and conciliation. Also, provincial human rights commissions, such as in Ontario, have moved to early mediation. Access to these settlements and complaints would allow researchers to examine whether the quality of remedies is satisfactory. Finally, within mediation, there is the likelihood that repeat players (or those who already went through mediation) and those with "deep pockets" may have more bargaining power. This favours corporate respondents over both individual complainants and respondents.

Care must be taken in analyzing whether early mediation processes remain fair for all parties involved in human rights complaints. Related to this, research is needed into the effect of legal representation for human rights complainants. In particular, the human rights process was designed to be a "lawyer-less" process. But, some complainants choose to have legal representation. Do these complainants fare better, in terms of time to resolution and remedies, than complainants without representation?

3. *We recommend that the Canadian Human Rights Commission begin to gather more demographic and situational information about complaints that are filed.* While issues of confidentiality would have to be ensured, this information is important for three reasons.

   First, it is important to document who these women are to identify the subgroups filing complaints to the CHRC. For example, what types of women are more likely to file complaints? Are only experienced workers filing complaints?

   Second, it is important to gather more demographic information on who is doing the harassing. Similar to the examples just described, are younger males or single males more likely to harass compared to older males or married males?

   Finally, what situational characteristics lead women to file complaints? Do these women have knowledge of existing complaint procedures? Are certain workplaces under the jurisdiction of the CHRC more prone to particular types of sexual harassment?

   Without detailed information, it is difficult to evaluate the fairness of CHRC procedures. In particular, the issue of whether similar facts result in similar results needs to be evaluated (Johnson and Howe 1997). That is, do similar types of complaints to the CHRC result in similar types of dispositions and remedies? This question is crucial, especially in a procedural context of conciliation and negotiation. The compromise making that occurs in these procedures must not lead to differing types of justice allocated to the same situation.

Conclusion

Our analysis of sexual harassment complaints to the CHRC highlights what factors lead to complaint settlement, the average length of time for complaint resolution and the type of remedies commonly available from the CHRC. What can women expect from the CHRC? They can expect a relatively fair process albeit a long process. What they cannot expect is immediate relief from their harassment. For remedies, female complainants can expect some type of monetary compensation and maybe a letter of apology. Less likely are more structural remedies, such as harassment-sensitizing classes and policy changes, that may make the workplace culture free from harassment. Given that most sexual harassment complainants to the CHRC are no longer in their job when they file a complaint, these structural remedies may be of less concern to these women than "making themselves whole" again. Yet, these structural remedies are more likely to create harassment-free workplaces than the more individualized remedies.

BIBLIOGRAPHY

Backhouse, C. and L. Cohen. 1979. *The Secret Oppression: Sexual Harassment of Working Women*. Toronto: McMillan.

Bell and Korczak v. *The Flaming Steer Steakhouse Tavern Inc.* (Ont. 1980), 1 CHRR D/155 (Shime).

CHRC (Canadian Human Rights Commission). 1983. *Unwanted Sexual Attention and Sexual Harassment: Results of a Survey of Canadians*. Ottawa: Ministry of Supply and Services Canada.

———. 1998. *Filing a Complaint with the Canadian Human Rights Commission.* Ottawa: Minister of Public Works and Government Services.

Cleveland, J.N. and K. McNamara. 1996. "Understanding Sexual Harassment: Contributions from Research on Domestic Violence and Organizational Change." In *Sexual Harassment in the Workplace*. Edited by M.S. Stockdale. Thousand Oaks, CA: Sage. pp. 217-40.

Coles, F. 1986. "Forced to quit: sexual harassment complaints and agency response." *Sex Roles.* 14: 81-95.

Dupuis, Renée. 1998. *The Canadian Human Rights Commission and Sexual Harassment Complaints*. Ottawa, CHRC.

Fitzgerald, L., S. Swan and K. Fischer. 1995. "Why didn't she just report him? The psychological and legal implications of women's responses to sexual harassment." *Journal of Social Issues.* 51: 117-38.

Frideres, James S. and William J. Reeves. 1989. "The ability to implement human rights legislation in Canada." *Canadian Review of Sociology and Anthropology*. 26, 2: 311-32.

Grahame, K.M. 1985. "Sexual harassment." In *No Safe Place: Violence Against Women and Children*. Edited by Connie Guberman and Margie Wolfe. Toronto: Women's Press. pp. 109-26.

Gruber, J.E. 1998. "The impact of male work environments and organizational policies on women's experiences of sexual harassment." *Gender and Society.* 12, 3: 301-20.

Gruber, J.E. and M. Smith. 1995. "Women's responses to sexual harassment: A multivariate approach." *Basic and Applied Social Psychology.* 17, 4: 543-62.

Gutek, B. 1996. “Sexual Harassment at Work: When an Organization Fails to Respond.” In *Sexual Harassment in the Workplace*. Edited by M.S. Stockdale. Thousand Oaks, CA: Sage. pp. 272-90.

Harris v. *Forklift Systems*. 510 U.S. 141 (1993).

Howe, R.B. and M. Andrade. 1994. “The reputations of human rights commissions in Canada.” *Canadian Journal of Law and Society.* 9: 1-20.

Janzen v. *Platy Enterprises* (Con. 1989), 10 CHRR D/6205 (Dickson); appealed from (1986), 8 CHRR D/3831 (Man. C.A.); rev’ d (*sub nom. Janzen* v. *Pharos Restaurant*) (1986), 7 CHRR D/3309 (Man. Q.B.); aff’ g (1984), 6 CHRR D/2735 (Man. Bd. Adj.).

Johnson, D. and B. Howe. 1997. “Human rights commissions in Canada: Reform or reinvention in a time of restraint?” *Canadian Journal of Law and Society.* 12, 1: 1-34.

Lindenberg, K.E. and L.A. Reese. 1996. “Sexual harassment policy: What do employees want?” *Policy Studies Journal.* 24, 3: 387-403.

MacKinnon, C. 1978. *Sexual Harassment of Working Women*. New Haven: Yale University Press.

Robichaud v. *Brennan (Can. 1983)* 4 C.H.R.R. D/127 (Review Tribunal).

Rowe, M. 1996. “Dealing with Sexual Harassment: A Systems Approach.” In *Sexual Harassment in the Workplace*. Edited by M.S. Stockdale. Thousand Oaks, CA: Sage. pp. 241-73.

Smart, Carol. 1995. *Law, Crime and Sexuality*. Thousand Oaks, CA: Sage.

Stambaugh, P.M. 1997. “The power of law and the sexual harassment complaints of women.” *NWSA Journal.* 9, 2: 23-42.

Tangri, S., M. Burt and L. Johnson. 1982. “Sexual Harassment at Work: Three Explanatory Models.” *Journal of Social Issues.* 38: 33-54.

Terpstra, D. and D. Baker. 1988. “Outcomes of sexual harassment charges.” *Academy of Management Journal.* 31: 185-94.

———. 1992. “Outcomes of federal court decisions on sexual harassment.” *Academy of Management Journal.* 35: 181-90.

Welsh, S. and J.E. Gruber. 1999 (forthcoming). “Not taking it anymore: Women who report and file complaints of sexual harassment.” *Canadian Review of Sociology and Anthropology*.

Welsh, S. and A. Nierobisz. 1997. “How prevalent is sexual harassment? A research note on measuring sexual harassment in Canada.” *Canadian Journal of Sociology.* 22, 4: 505-22.

Welsh, S., M. Dawson and A. Nierobisz. 1999. “Do extra-legal attributes matter: Sexual harassment complaints and the Canadian Human Rights Commission.” Presented at the annual meetings of the American Sociological Association. Chicago, IL (August 9).

APPENDIX A: DESCRIPTION OF VARIABLES

Dependent Variables

Dispositions

This dependent variable had three possible dispositions: case settled, no further proceedings and case dismissed. Each disposition was measured separately for various analyses (1 = the particular outcome being examined; 0 = absence of that outcome). Of particular interest, was whether or not a case was settled, either formally or informally. Formal settlements are generally those approved by the CHRC and agreed to by the parties involved. Informal settlements are those where the matter is resolved informally or privately between the parties involved, often before the CHRC completes its investigation. To capture these cases, a fourth disposition variable was constructed (1 = cases settled informally or formally; 0 = cases that were dismissed, primarily due to lack of evidence).

Related to this, the amount of time a case takes to reach resolution and the factors that either prolong or speed up this process are a concern for both the complainant and the employing organization. To capture this, we employed a continuous measure of time to resolution that totals the number of months that elapsed from the time a case was officially opened to the final disposition, regardless of the outcome.

Remedies

Whether or not a case is settled, either formally or informally, is only one decision that has to be reached in these proceedings. Once a case is settled, a remedy has to be decided on. There are four major remedies for sexual harassment cases: a monetary settlement, a letter of apology, a directive to attend a harassment sensitizing class and, finally, an order to implement a harassment policy within the employing organization (if one does not already exist). Each of these four remedies was coded as a separate outcome (1 = the existence of that remedy; 0 = if that remedy was not incorporated). Separate analyses were conducted to see what factors predicted what remedies. Finally, a variable was constructed to capture those cases in which more than one remedy was used.

Related to this, because monetary settlements are a source of concern for both complainants and respondents alike, it is important to examine the relationship between characteristics of sexual harassment complaints and the amount of monetary settlements. We used a continuous measure of the amount of monetary awards received in cases informally or formally settled.

Independent Variables

Various independent variables were identified as having potential effects on the above dependent variables, including characteristics of the case, the sexual harassment and the employing organization. The first variable measures both the type and severity of harassment experienced by the complainant. Previous research shows that complaints involving severe forms of sexual harassment, such as sexual assault and propositions linked to threats of employment loss, increase the odds of a case being settled favourably for the complainant

(e.g., Terpstra and Baker 1988). We use a multi-dimensional measure of sexual harassment, reflecting current research that demonstrates that sexual harassment behaviors tend to co-occur. (Gruber et al. 1996; Schneider et al. 1997). We used latent class analysis (not reported here, available from authors on request) to create a dichotomous sexual harassment variable. Type of harassment was coded 1 if it comprised "coercive sexual behaviour." In these cases, unwanted sexual attention is common. This may include being stared at and/or inappropriately touched. Sexual coercion or *quid pro quo* harassment may also be present. In other words, this type of harassment involves behaviours that are overtly sexual and directed at particular individuals. The reference category was poisoned environment harassment that includes both gendered and sexual derogatory comments and actions that may permeate the workplace. While some of the harassment in these cases was personally directed at particular individuals, other harassment, such as the presence of sexual posters and general comments about the inability of women to perform their jobs, was not.

A second variable captures employment consequences due to the harassment. Loss of job measures whether the complainant was still in the job where the harassment occurred at the time the complaint was filed (1 = not in job). Most women not in their jobs quit, were fired or were forced to resign. A small number were on sick leave, transferred to another position or demoted. Psychological distress, the second variable measuring employment consequences, indicates psychological damage resulting from the harassment (distress equals 1).

Because there is growing awareness about sexual harassment as a problem in both society and the workplace, time is an important factor when examining responses to this phenomenon. Two separate dummy variables are included to capture the effects of legal precedents, representing two periods, 1984 to 1989 and 1990 to 1993. The reference category comprises early cases filed between 1978 and 1983. In 1984, the Human Rights Tribunal decided in *Robichaud* v. *Brennan* that the complainant had experienced sexual harassment and hence, the respondent must show that his behaviour did not constitute sexual harassment. The period from 1989 to 1993 represents complaints filed after the Canadian Supreme Court decision in *Janzen* v. *Platy*. We hypothesized that later cases would have a greater likelihood of being settled because *Robichaud* and *Janzen* set legal precedents for circumstances under which corporate respondents are liable for the sexually harassing behaviors of employees and for what constitutes sexual harassment.

The employing organizations' history of sexual harassment complaints may also have a potential effect on dispositions in such cases. In studies of criminal cases, the defendant's prior criminal record is often considered an indicator of respectability (Black 1993). For third-party mediation, respectability may stem from how often previous complaints have been filed against a corporate entity or individual. Just as respectability in the criminal realm varies across social space, so does respectability in the realm of workplace disputes, in general, and sexual harassment complaints, in particular. We hypothesize that a company facing a complaint of sexual harassment with no previous history of complaints may be perceived as more respectable by the CHRC than a company having a number of previous complaints. Those companies with only one complaint recorded for the entire study period were coded as 0. Those cases in which a company had two or more complaints filed against it during the

study period were assigned values according to the number of cases that had preceded the case in question. For example, if there were three sexual harassment cases recorded for one organization during the study period, and the case in question was the most recent, that case was assigned a value of 2 on the general respectability variable (i.e., two complaints before the current one). This variable was entered as a dichotomous measure to capture whether or not an employing organization had a history of prior complaints (1 = history of prior complaints).

To measure case processing, whether or not the complaint was sent to conciliation is used. During the complaint process, the CHRC has the option of sending a case to conciliation in an effort to bring about an agreement between, or among, the parties involved. This generally occurs when the investigation found evidence of sexual harassment and when there was some likelihood the complainant and respondent might reach a settlement. Because cases sent to conciliation are likely those with corroborating evidence of harassment, this variable may also act as a proxy for the quality of evidence available. Complaints sent to conciliation by the CHRC are coded as 1. Complaints not sent to conciliation are coded as 0.

Several variables measure what are often referred to in socio-legal literature as “extra-legal” attributes of individuals involved in the sexual harassment complaints. These are characteristics that should have no legal relevance to a case, but may, in fact, influence the final disposition. The first variable in this group captures the harasser’s organizational position in relation to the complainant. A position of authority was coded 1 if the alleged harasser had supervisory authority over the complainant. This includes both those with a formal title of supervisor as well as instructors or other workplace leaders. If the harasser was a co-worker, the position of authority was coded as 0. Second, employment status was coded 1 if the complainant was a temporary worker or still on a probationary period. If the complainant was a full-time worker, work status was coded as 0. Finally, we also included occupation of the complainant, measured as a dummy variable. Those coded 0 are professional and managerial employees. Those coded 1 are pink- and blue-collar workers.

Four variables measured characteristics of the organization and might also be considered extra-legal factors. Company type was entered as a dichotomous variable comparing private and public institutions/companies. Organization type was coded 1 if it was a private, non-governmental corporation and 0 if it was a federal organization (including the Canadian Armed Forces). Two other measures of organizational characteristics are number of employees or size of the organization and the annual sales of the organization. The structure of the employing organization is also relevant for understanding the outcome of complaints. Due to the skewed nature of these variables, both were converted to the natural logarithm. In our analysis, we incorporate the context of the employing organization, in particular, the extent to which organizational size and profitability matter for the outcome of sexual harassment complaints.

A fourth variable captures whether or not the complaint originated from a female-dominated industry. Information for this variable was taken from the *Labour Force Historical Review* (1997). This document provides yearly estimates of the numbers of male and female

employees in industrial categories. Most of the major industrial categories identified in the Census of Canada and the Labour Force Survey are supplied in the historical review. Missing are gender composition percentages from the Armed Forces. For this analysis, those complaints from the Armed Forces were assigned the average industry sex composition value. An industry was categorized as female-dominated if the proportion of female employees exceeded 60 percent and as male-dominated (the reference category) if female employees comprised less than 30 percent of the employees. The remaining industries, where male and female employees were equally represented, were entered as a separate variable.

Finally, we included two contextual variables concerning the sexual harassment itself, the number of harassers and the number of complainants involved in each case. Cases that involved more than one harasser or victim were coded as 1 while those complaints involving only one harasser or victim were coded as 0.

APPENDIX B: MULTIPLE REGRESSION ANALYSIS FOR TIME TO RESOLUTION

Table B-1: Coefficients for Regression of the Amount of Time to Resolution[a] on Various Case Characteristics, 1978-1993, Female Complainants, Corporate Respondents

Variable	Coefficient
Loss of psychological occurred	1.38
Complainant job status	2.22
Sexual coercion	-2.48
Year of complaint 1984-89	11.49***
Year of complaint 1990-93	5.25
Previous complaints	4.36**
Conciliation occurred in complaint	17.03***
Harasser in authority	2.60
Employment status	1.04
Occupation dichotomy for complainant	2.072
Organizational dichotomy – federal or non-federal	0.214
Number of harassers	-2.07
Others harassed dichotomy	3.49*
Number of employees	4.33E-02
Annual sales	0.92**
No further proceedings	-1.52
Complaint settled	-2.78
Industry, equally male and females	2.00
Industry, female dominated	-3.00
Constant	-12.46

Notes

*p<.10 **p<.05 ***p<.01

[a] Dependent variable: time to resolution (in months).

APPENDIX C: MULTIPLE REGRESSION ANALYSIS FOR MONETARY REWARD

Table C-1: Coefficients for Regression of the Amount of Monetary Award in Settled Cases on Various Case Characteristics, 1978-1993, Female Complainants, Corporate Respondents

Variable	Coefficient
Loss of psychological occurred	1.71
Complainant job status	28.49**
Sexual coercion	-18.73*
Year of complaint 1984-89	8.58
Year of complaint 1990-93	0.49
Previous complaints	4.07
Conciliation occurred in complaint	11.93
Harasser in authority	5.48
Employment status	7.66
Occupation dichotomy for complainant	2.80
Organizational dichotomy – federal or non-federal	4.82
Number of harassers	16.38
Others harassed dichotomy	-10.78
Number of employees	0.87
Annual sales	-3.66
No further proceedings	27.24*
Industry, equally male and females	-4.21
Industry, female dominated	45.23***
Constant	100.60

Notes
*p<.10 **p<.05 ***p<.01

ENDNOTES

[1] Men comprised about five percent of the sexual harassment complainants during the period of this study.

[2] Throughout this report we refer to these types of settlements as informal. For formal settlements, a Minutes of Settlement form is usually included in the CHRC file and has been approved by the commissioners. Informal settlements are those negotiated during the investigation process and may be the result of private negotiations between the complainant and the respondent. Often, these types of settlements result in a disposition of "no further proceedings," the settlement is not sent to the commissioners for approval and the complaint is considered resolved.

[3] As stated in s. 65(2) of the *Canadian Human Rights Act*, employers are not held liable for the actions of an employee "if it is established that the...organization...exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof."

[4] *Quid pro quo* harassment is the legal term for sexual harassment that includes sexual solicitation involving a work-related threat or promise (e.g., loss of job, promotion).

[5] For non-governmental organizations, annual sales are taken from published sales numbers in the Key Business Indicators documents. Annual sales for government departments and agencies are calculated as the total budget for the department or agency in a given year. Although this is technically not "sales," it is an approximation of the relative worth in monetary terms of government departments and agencies.

[6] To reduce the amount of statistical language in the report, we note where there are significant relationships but do not always provide the statistics used to determine significance. Where noted, some results are available in the appendices. As well, all results are available from the authors.

[7] As discussed later in the report, complaints that go through conciliation take longer to reach a resolution than other complaints. So while there is a higher likelihood of settlement for complaints undergoing conciliation, it comes at a cost in terms of time.

[8] Our earlier research (Welsh et al.1997) provides more details concerning the gendered context of the law. A full discussion of this issue is outside the scope of this report. Of concern is the issue that victims of racial harassment do not face similar criteria, showing psychological distress, as do victims of sexual harassment (e.g., Fitzgerald et al. 1995).

[9] The length of time also adversely affects respondents, but this issue is beyond the scope of this report.

[10] One case was excluded from these analyses as it took an unprecedented amount of time to reach a resolution. The individual respondent sample is not analyzed because there are insufficient numbers for multivariate analysis.

[11] Johnson and Howe (1997) also encourage human rights commissions to be cautious in the use of conciliation and mediation. Conciliation is a process of compromise making that "should never result in compromised rights" (R. Dworkin quoted in Johnson and Howe 1997: 19). Here, the CHRC seems to have found an appropriate balance for, as the following section on remedies shows, complaints going through conciliation result in broader remedies than other complaints.

[12] The CHRC published an employer's guide for anti-harassment policies for the workplace in December 1998. These policies represent some of the "best practices" for harassment policies. Yet, there has still been no systemic research on whether or not these policies are effective for encouraging people to report harassment and/or diminishing the amount of harassment in workplaces.

[13] The limit for "hurt feelings" was $5,000 until Bill S-5 was enacted in June 1998. Under the current statute, the limit is $20,000.