Sexual Harassment is a Continuing Issue in Canada

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[1] Sexual harassment has long been recognized in Canada as a form of gender discrimination. For several years, gender discrimination (which includes discrimination based on breast feeding, sexual harassment, transgender and pregnancy) was the most commonly alleged ground of discrimination in both federal and provincial human rights commission complaints. More recently, however, disability (both mental and physical) has become the most common ground of complaint. One hoped that this was because long standing human rights cases and education resulted in a decline in sexual harassment. However, recent cases in schools and workplaces indicate that sexual harassment has continued to be a problem, particularly in systemic contexts – for example, throughout a workplace as a whole, rather than single incidents of sexual harassment.

If an individual is faced with sexual harassment in the workplace, there are a number of remedies. Some workplaces have sexual harassment policies that provide for internal investigation and remedies. Many victims of sexual harassment are reluctant to report the harassment because they fear for their jobs, they do not want to have to discuss personal matters with their supervisors, they feel they will not be believed, or they do not wish to bring trouble to the perpetrator.

If the sexual harassment is physical in nature, it may provide evidence of the crime of sexual assault (intentional physical contact of a sexual nature to which there is no consent). This may be reported to the police, who will investigate the circumstances and decide whether or not to lay criminal charges.

In the human rights context, sexual harassment is broadly defined as unwanted sexual attention. It can include physical, verbal and non-verbal conduct. Physical conduct includes slapping, pinching, grabbing and related conduct. Verbal harassment includes propositioning or making unwanted comments of a sexual nature. Finally, non-verbal sexual harassment includes making gestures and posting pictures of a sexual nature. In Canada, a poisoned work environment (e.g., being surrounded by sexually based jokes and images) is also considered a form of sexual harassment. The usual remedies provided for sexual harassment
by human rights commissions include:

an apology from the harasser;
the employer instituting a sexual harassment policy;
providing anti-sexual harassment education sessions; and
paying a small amount of money for hurt feelings.

In some circumstances, victims who resigned as a result of the harassment can be re-instated. The purpose of human rights remedies is educational and is not meant to punish workers or employers.

While there is no recognized tort of discrimination (or sexual harassment), more recently, victims of sexual harassment are launching civil suits against employers and perpetrators for the intentional tort of infliction of emotional/ mental suffering, the intentional tort of sexual assault and battery, or wrongful or constructive dismissal. These actions can result in the award of damages for lost income, loss of future income, cost of future care and other expenses. Sometimes tort cases also involve the award of punitive (punishing) or aggravated (individual special circumstances) damages.

In 2012, over 200 policewomen and former officers filed a class action lawsuit against the Royal Canadian Mounted Police (a federal police force). The suit alleges that the system has had numerous problems with regard to sexual harassment over several years, which have not been adequately addressed by the RCMP. Litigants allege that complaints of sexual harassment were not dealt with. (see: Press TV Canada“Policewomen file sex harassment lawsuit against federal police [2]”). Allegations range from pervasive abuse resulting in post traumatic stress disorder to being passed over for promotions. The federal government (and the British Columbia government who use the RCMP as a police force) have filed a statement of defence in which they deny the allegations. These cases will likely take years to resolve.

While it may be more desirable to use the human rights system in cases of sexual harassment, it appears that the representatives of these policewomen have decided that a systemic remedy is needed to address what they believe is a pervasive problem. Perhaps we will witness other professions launching similar lawsuits to address systemic sexual harassment. It should be noted that some of the worst offenders are occupations which are traditionally male or female. For example, many male nurses report that they are sexually harassed on the job. Thus, the problem with female police officers may be explained (but not excused) by this phenomenon. We can hope that a positive work environment for everyone will be the result of these cases.

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