

COMMENTS

Bell v. The Flaming Steer Steak House Tavern: Canada's First Sexual Harassment Decision

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On August 12, 1980, Owen Shime, who was constituted as a Board of Inquiry under The Ontario Human Rights Code,¹ handed down the first sexual harassment² decision issued by a human rights tribunal in Canada.³ Shime considered two complaints of sexual harassment against Ernest Ladas, the owner of The Flaming Steer Restaurant in Niagara Falls, Ontario. Cherie Bell, a waitress employed part-time by Ladas, stated that Ladas had made sexual comments to her and asked her to have sexual intercourse. She further alleged that her refusal to comply with this suggestion brought about her dismissal. Anna Korczak, another of Ladas' employees, claimed that he had propositioned her and made unsolicited and unwelcome

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¹ R.S.O. 1970, c. 318.

² The term "sexual harassment" was first used at a public forum in Ithaca, New York, in 1975, when a group of 275 women met to discuss the problems of employees who had experienced coercive sexual advances on the job. The definition of sexual harassment has since evolved to include more subtle forms of unwelcome sexual attention. See below, "The Range of Prohibited Conduct."

³ *Bell & Korczak v. Ladas & The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para. 1383-1442.

physical advances. Her rejection of these advances, she argued, resulted in her dismissal.

Ultimately the Board dismissed both of these claims on evidentiary grounds. Prior to reaching this decision, Shime concluded that sexual harassment constituted sex discrimination, outlined the range of prohibited conduct, and considered the evidentiary issues of similar fact evidence, credibility, and onus of proof. This comment will examine the process by which the Board reached its conclusion. The case serves as a useful vehicle for illustrating some of the difficult legal problems raised by sexual harassment complaints.

The Jurisdictional Issue

The Board was required initially to consider whether sexual harassment constituted sex discrimination. This issue was critical to further deliberation – although The Ontario Human Rights Code prohibits discrimination in employment on the basis of sex, sexual harassment, as such, is not prohibited.⁴ Using somewhat circular language, Shime concluded that sexual harassment did, in fact, constitute sex discrimination.

Clearly a person who is disadvantaged because of her sex is being discriminated against in her employment when employer conduct... exacts some form of sexual compliance to improve or maintain her existing benefits. The evil to be remedied is the utilization of economic power or authority so as to restrict a woman's guaranteed and equal access to the work-place, and all of its benefits, free from extraneous pressures having to do with the mere fact that she is a woman.⁵

While, in my opinion, the Board came to the correct result, it did so without considering many of the underlying issues. Counsel for Ladas failed to argue these issues, which may account for the sparseness of the reasoning.

There are several arguments against Shime's conclusion which were not considered. It is interesting that this issue has sparked a great deal of litigation in the United States, where a number of courts have concluded that sexual harassment was not prohibited under discrimination statutes such as the Civil Rights Act, 1964.⁶ It has been argued that sex discrimination must involve gender-specific behaviour; the sexual harassment must be directed solely at one sex, and not the other. Thus, sexual harassment would constitute sex discrimination,

⁴ At the point of writing, Bill 209, An Act to revise and extend Protection of Human Rights in Ontario, had just been introduced to the Ontario Legislature. For a discussion of how this bill would alter the legal issues facing sexual harassment complainants see, *infra*.

⁵ *Bell v. The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para. 1388.

⁶ *Corne and DeVane v. Bausch & Lomb* (1975), 390 F. Supp. 161 (D. Ariz.), *vacated and remanded* (1977), 562 F. 2d 55 (9th Cir.). Although the reporter gives no particulars about the remand, it involved the question of deferral to the state agency, not the issue of sexual harassment; *Miller v. Bank of America* (1976), 418 F. Supp. 233 (N.D. Cal.), *appeal docketed*, No. 76-3344 (10th Cir. 1976); *Barnes v. Train* (1974), 13 FEP Cases 123, 124 (D.D.C.), *rev'd sub. nom. Barnes v. Costle* (1977), 561 F. 2d 983 (D.C. Cir.); *Tomkins v. Public Service Electric & Gas Co.* (1976), 442 F. Supp. 553 (D.N.J.), *rev'd* (1977), 568 F. 2d 1044 (3d. Cir.).

for example, only if males initiate coercive sexual advances towards females. This line of reasoning suggests that if females also sexually harass males, the behaviour would lose its discriminatory quality.⁷ The obvious response to this point is that sex discrimination does not always require a characteristic peculiar to one gender. Even if both genders are subjected to sexual harassment, the essential legal concern is that a particular employee (or a group of employees) has had an artificial barrier placed before him or her which was not placed before employees of the other gender. Thus, all sexual harassment except bisexual attention directed equally at both male and female employees is sex discrimination. This illustrates the problem of using the concept of discrimination to deal with the phenomenon of sexual harassment. Society should not tolerate bisexual harassment any more than it tolerates heterosexual or homosexual sexual harassment.

Another argument against finding that sexual harassment constitutes sex discrimination is that a victim of sexual harassment is penalized because she⁸ rejected the sexual advances of her supervisor, not because of her sex.⁹ In the same vein, it is said that the supervisor is discriminating against this woman, not because of her sex, but because he finds her sexually attractive. The supervisor has not sexually harassed all the women in his employ, merely this particular woman. The answer to this proposition seems fairly clear. Whether or not the attention is directed solely at one individual, so long as it is sex-based, it is discriminatory. Womanhood is the *sine qua non* of the sexual harassment. But for her femaleness, the victim of sexual harassment would not have been propositioned; she would not have been requested to participate in sexual activity if she were a man.

Shime has applied the legislation correctly. The legislation has forced him to adopt a sex-discrimination approach—an approach which is inherently defective when applied to sexual harassment. Shime may be criticized, however, for having ignored the analytical arguments underpinning his conclusion. As a result, the value of the Board's decision is weakened.

The Range of Prohibited Conduct

The range of prohibited conduct is perhaps the most difficult issue in sexual harassment. Boldly, the Board struck out to define the gamut of discrimination. Shime indicated that it ranged from: "coerced intercourse to unsolicited physical

⁷ *Corne and DeVane v. Bausch & Lomb* (1975), 390 F. Supp. 161 (D. Ariz.); *Tomkins v. Public Service Electric & Gas Co.* (1976), 422 F. Supp. 553 (D.N.J.), *rev'd* (1977), 568 F. 2d 1044 (3d Cir.).

⁸ Both men and women can be subjected to sexual harassment. However, as a matter of linguistic and grammatical convenience, this comment will refer in general terms to sexual harassment victims as female.

⁹ *Barnes v. Train* (1974), 13 FEP Cases 123, 124 (D.D.C.), *rev'd sub. nom. Barnes v. Costle* (1977), 561 F. 2d 983 (D.C. Civ.) *Tomkins v. Public Service Electric & Gas Co.* (1976), 422 F. Supp. 553 (D.N.J.), *rev'd* (1977), 568 F. 2d. 1044 (3d Cir.).

contact to persistent propositions to more subtle conduct such as gender based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment.”¹⁰ Shime’s definitional approach, while sweeping, is not as useful as it might have been because of his failure to differentiate between the various forms sexual harassment can take. In the most obvious examples of sexual harassment, a supervisor demands a sexual relationship from a subordinate employee, the employee refuses, and the supervisor retaliates with a job-related reprisal. Catherine MacKinnon, in *Sexual Harassment of Working Women*, has described this category of sexual harassment as “quid pro quo.”¹¹ The term “sexual harassment” has, however, evolved to include more subtle forms of behaviour, where there is no explicit demand for sex, but there are gender-based comments and taunts which make the work environment more unpleasant for one gender than for the other. This type of behaviour involves a more indirect form of economic coercion, since there is no attempt to force the employee into sexual involvement. What is required of the employees is that they tolerate this form of attention with some sense of “good humour.” Unless the employee expressly objects to this treatment, it is unlikely that she will experience employment retaliation. This category of sexual harassment has been labelled “conditions of work” by MacKinnon.¹²

These two categories represent the polar extremes of sexual harassment,¹³ yet both of them are included in Shime’s definition. Presumably the *quid pro quo* situation provides an obvious example of sex discrimination, since the employee has been asked to comply with a job requirement not demanded of employees of the other gender. That such behaviour is prohibited by the Ontario Human Rights Code seems clear. The second category, however, raises far more difficult questions about the appropriate legal response. Some would argue that the law has no role in prohibiting such behaviour—that rather than seeking such obtrusive over-regulation from the legal system, employees who object to such treatment should use non-legal strategies to eliminate this form of sexual harassment. If one does decide to use legal sanctions, a number of difficult definitional and evidentiary questions arise. Should a single taunt be sufficient, or would a deliberate pattern of conduct be required? How does one distinguish between

¹⁰ *Bell v. The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para. 1389.

¹¹ Catherine MacKinnon, *Sexual Harassment of Working Women* (1979) at 32.

¹² *Ibid.* at 40.

¹³ Apart from these two categories, there are a variety of sexual harassment cases falling somewhere between these extremes. In some cases, the supervisor will make a sexual advance, the employee will reject it, but there will be no job-related reprisals. In other cases, the employee may comply with the advances and suffer the reprisals anyway. Whether such situations give rise to legal remedies on the part of sexual harassment victims or other employees who may claim discrimination because they were not given the opportunity to compete for job benefits on an equal basis with the sexually harassed employee are questions which remain to be decided by tribunals in the future.

tasteless humour and sexual harassment? The problems posed by the legal response to the second category of sexual harassment are complex and deserve detailed examination in the future. From an analytical point of view, it would have been wiser to distinguish between the two categories at the outset. By lumping coerced intercourse together with gender-based insults and taunting, Shime's decision neglected to consider that a differing legal response may be required by different forms of sexual harassment.

It is clear from Shime's definition that sexual harassment must be objectively determined. The sexual harassment, he states, must "reasonably be perceived to create a negative psychological and emotional work environment."¹⁴ Since human rights tribunals are only beginning to adjudicate sexual harassment complaints, it seems wise to restrict their reach to situations where reasonable citizens in the community would find the behaviour offensive. Yet one cost of choosing the objective standard will be to deny relief to some victims of sexual harassment who, for whatever reasons, may genuinely suffer employment problems due to their own subjective response to overtures on the job. As well, an objective test will penalize those employers who do not intend their behaviour to be offensive.

Settling on an objective test does not end the discussion, since there are at least two parties involved in any sexual harassment situation. Should the reasonableness be judged from the employer's perspective or from the employee's perspective? The power differential between employer and employee creates a peculiarly sensitive relationship which can colour the meaning of a sexual overture, leading a reasonable employee to interpret an employer's relatively innocuous advance as threat-laden and coercive.¹⁵ In addition to differences in perspective between a reasonable employer and a reasonable employee, one could argue that, in matters relating to sexual initiatives, there is often a different interpretation between a reasonable man and a reasonable woman. Men and women have been socialized differently and, as a result, in many situations a man may ignore or consider flattering advances and conduct which would drive a woman out of her job. The Shime decision failed to decide whether the reasonableness must relate to the employer or employee perspective and whether it relates to a man or a woman.

Evidentiary Considerations

A number of evidentiary points which were raised in the case also deserve comment. Resolution of evidentiary matters will

¹⁴ *Bell v. The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para. 1389.

¹⁵ A useful comparison can be drawn here with labour law's restriction of employer speech during union-organizing campaigns. See, for example, *NLRB v. The Fedderbush Co. Inc.* (1941), 121 F. 2d 954 (C.A., 2nd Cir.); *Hayes Steel Products Ltd.*, [1964] O.L.R.B. April Mthly Rep. 30.

always be critical in sexual harassment cases, since corroborative witnesses are rarely available. Furthermore, our legal system is imbued with deep-rooted fears about unfounded claims of sexual abuse. In most cases of sexual harassment it is to be expected that the complainant will be the sole witness for her side, and the alleged sexual harasser will deny all of the allegations. As a result, the trier of fact will be hard-pressed to determine which side to believe. In *The Flaming Steer Steak House Tavern* case, the Human Rights Commission attempted to overcome this problem by bringing complaints on behalf of two women against one employer. However, the Board refused to allow the evidence of one complaint to be used as similar fact evidence in the other.

Similar fact evidence appears to be clearly admissible to show intent, state of mind, and *mens rea*.¹⁶ Thus, such evidence would be particularly relevant in cases where the defendant admitted the conduct in question but denied that he was aware of its offensive quality. Evidence that other employees had complained or, to his knowledge, left his employment because of such behaviour would help to establish the defendant's intent and knowledge. However, in *The Flaming Steer* case, Ladas denied all the allegations and maintained that he had at all material times acted with complete propriety. Thus, the complainants wished to introduce the similar fact evidence as proof that the initial allegations were truthful.

Criminal courts have long been concerned that similar fact evidence would improperly influence the trier of fact to conclude that the accused, because of his criminal conduct or character, was the type of person likely to commit the offence charged.¹⁷ The doctrine of similar fact evidence has developed to allow certain evidence of this type to be admitted because of its specific connection with the facts alleged. Generally, it is required that there be enough similarity between the misconduct on other occasions and the complaint in question to support an inference that the same person was responsible for both.

Shime refused to admit the similar fact evidence in this case on the ground that the alleged sexual approaches differed in nature and tone and thus did not indicate a pattern.¹⁸ Focusing on the differing features of the alleged sexual approach, the Board stated that in one case Ladas was alleged to have slapped Korczak on the rear, whereas no physical contact of this sort was suggested in the other complaint. Approaches made to one of the women allegedly involved invitations for drinks and to a hotel room, whereas the complainant in the other case made no mention of this type of behaviour. The Board concluded that it was "not prepared to find that the alleged sexual overtures made to the two complainants were so unusual, or

¹⁶ *MacDonald v. Canada Kelp Co. Ltd.* (1973), 39 D.L.R. (3d) 617 (B.C.C.A.).

¹⁷ *Makin v. A. G. of New South Wales*, [1894] A.C. 57 at 65, *per* Lord Herschell (P.C.).

¹⁸ *Bell v. The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para. 1427.

bore such a striking similarity, that the evidence of each of the complaints should be treated as similar fact evidence having some probative value in the other's complaint."¹⁹ The degree of similarity which the Board required here was too onerous. Making sexual overtures to two subordinate female employees in the work setting and then firing each of them for failing to comply constitutes, where proved, a pattern of conduct in itself. Similarity exists in that this man chooses to make sexual advances to a female person in his employ, the approach is made on the job, and both employees suffer similar ramifications for failing to comply with the advances. Requiring a "striking similarity" in sexual approach before utilizing one complainant's testimony as probative evidence for another complaint is likely to eliminate the usefulness of this legal doctrine in sexual harassment cases.

In English law the discretion exists for judges to exclude any evidence where the probative value is outweighed by the prejudicial effect.²⁰ In Canada the discretion exists only where, in the opinion of the trial judge, the evidence is gravely prejudicial to the accused and is of trifling probative force in relation to the main issue.²¹ Shime refused to admit the similar fact evidence, concluding that the "prejudicial value [of the evidence] outweigh[ed] its probative value."²² Given the obvious proof problems faced by most sexual harassment complainants, who lack witnesses or tangible evidence, testimony from other employees who have experienced sexual harassment from the same defendant will be compellingly probative. In this context, tribunals will repeatedly have to struggle to draw the difficult balance between the essential need to admit the evidence in order to enforce the legislation and the potentially prejudicial effect upon the defendant.

Faced with complainants who alleged they had been dismissed for failing to comply with an employer's sexual demands and an employer who alleged the termination was due to substandard work practices, the Board had to examine the credibility of the complainants. In any adjudicative process, counsel will have made an initial assessment of how a client will hold up under examination. Lawyers generally decide to undertake litigation only where the client is likely to seem credible on the witness stand. This initial screening of the complainant's credibility is strengthened, however, by the policies adopted by the Human Rights Commission. Under the present legislation, a complaint only goes forward to a board of inquiry after the investigating human rights officer has made a positive recommendation to members of the Commission, the

¹⁹ *Ibid.*

²⁰ *Noor Mohammed v. R.*, [1949] A.C. 182 (P.C.); *Kuruma v. R.*, [1955] A.C. 236 (P.C.); *Callis v. Gunn*, [1964] 1 Q.B. 495; *Jeffrey v. Black*, [1978] Q.B. 490 (Div. Ct.); *R. v. Sang*, [1980] A.C. 402 (H.L.).

²¹ *R. v. Wray*, [1971] S.C.R. 272; *R. v. Glynn* (1971), 5 C.C.C. (2d) 364 (Ont. C.A.)

²² *Bell v. The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para. 1426.

Commission has received a positive legal opinion from outside legal counsel, the Commission has made a positive recommendation to the Minister of Labour, and the Minister has agreed to the adjudication. Partly out of a concern over the expenditure of public funds and partly for strategic reasons (especially in the case of a novel legal issue), the Commission will often wait for what it considers to be an extremely strong case before setting up a board of inquiry.²³ As a result, one might think that in a contest of credibility the complainants would be likely to fare well.

Yet in the case of Cherie Bell, the Board concluded that Bell's evidence was less than completely candid and rejected her complaint. Shime noted that Bell had telephoned her employer after the alleged sexual harassment had taken place to find out her hours of work for the following week. This was the point at which she learned she had been dismissed. Yet she alleged in her complaint that the psychological trauma of the sexual harassment incapacitated her from work for seven months following the incidents. When she filed her complaint she had been inaccurate about the dates on which she alleged the sexual harassment had occurred. Her specific testimony during the hearing differed slightly from the details of her complaint made to the Commission in the first instance.

It is understandable that a board which is forced to choose between the credibility of conflicting witnesses will seize on these evidentiary problems as indications of exaggeration and inaccuracy. However, there are two problems with Shime's judgment. Firstly, he seemed to be insensitive to the trauma which surrounds sexual harassment. Victims of sexual harassment (as well as victims of other traumatic events) are not going to escape the incident emotionally unscathed. As yet there is little empirical or medical evidence on the impact of sexual harassment. But one group, the Alliance Against Sexual Coercion (a non-profit centre which counsels victims of sexual harassment throughout the United States), has suggested that women experiencing the stress of sexual harassment may undergo a level of tension which can cause them to ramble, lose focus, and become confused in their descriptions of sexual harassment incidents.²⁴ To disbelieve sexual harassment complainants because they do not appear objective, rational, and collected may be unfair. While the Board's response to inconsistencies in Bell's testimony is understandable, its approach may well deny a legal remedy to a large number of *bona fide* sexual harassment complainants.

Secondly, Shime concluded that Bell had exaggerated the quantum of damages she was seeking. Even if one agrees with Shime's holding, it is true that plaintiffs frequently tend to

²³ In fact, *The Flaming Steer* case was the first sexual harassment complaint to be fully adjudicated by a board of inquiry in the entire three years that the Ontario Human Rights Commission had been investigating sexual harassment complaints.

²⁴ Alliance Against Sexual Coercion, *Fighting Sexual Harassment* (1979) (P.O. Box 1, Cambridge, Mass. 02139).

estimate their damages on the high side. Since it is not uncommon to argue over the extent of injuries, a certain amount of puffery is often expected from both parties. Indeed, it is often advised by counsel. The central issue, however, is not how long Bell was incapacitated from work, but whether she was sexually harassed.

On Anna Korczak's complaint, the Board was unable to form a preference on the merits for the credibility of the complainant or her employer. As a result, the complainant, who bore the onus of proof, failed. This illustrates the inherent difficulties of proving a sexual harassment complaint and perhaps suggests that reverse onus legislation may be required. With such legislation, the sexual harassment victim would have to prove that she had been employed by the organization, that she had been subjected to employment reprisals, and allege that this was due to sexual harassment. The onus²⁵ would then shift to the employer to prove that the only motives for the job sanctions were *bona fide*. Similar reverse onus legislation exists in labour legislation, prohibiting employer reprisals for union organizing.²⁶ The theory behind the reverse onus is that the employer initiated the discharge or discipline and is thus in the best position to adduce evidence. This theory applies equally to situations of sexual harassment employment reprisals. To suggest a reverse onus of proof in sexual harassment cases constitutes an obvious departure from other human rights procedures and thus presents a difficult issue. However, given the secrecy which surrounds sexual harassment incidents, one must recognize that onus of proof rules are critical to the resolution of most complaints. The legislature must determine as a matter of social policy whether the conduct is so widespread and so detrimental to society that it ought to legislate a reverse onus procedure.

Finally, the Board noted in its opinion that the motivation of the two complainants lay in financial reward. With respect to Bell the Board stated: "Thus, the exaggeration of her claim had its financial reward and, by so exaggerating her claim, one is left with the impression that Ms. Bell's motive in bringing the claim was, in part, improperly motivated."²⁷ With respect to Korczak the Board stated: "There was some evidence that she was motivated to bring this complaint because her financial position was impaired as a result of being terminated and consequently she lost her car."²⁸ To suggest that the seeking of compensatory damages is an improper motive seems somewhat absurd. Surely every civil litigant is motivated by the desire to obtain compensatory redress for wrongful conduct. These losses, should the allegation be made out, are legitimate

²⁵ One would have to consider whether only the evidential burden should shift or whether the full legal burden should be moved to the defendant.

²⁶ The Ontario Labour Relations Act, R.S.O. 1970, C. 232, s. 79(4a).

²⁷ *Bell v. The Flaming Steer Steak House Tavern* (1980), 1 C.H.R.R. D/155, para 1407.

²⁸ *Ibid.*, para. 1438.

heads of damage and are deserving of compensation. Furthermore, what other incentive would cause a complainant to undergo the humiliation and public embarrassment of litigating a sexual harassment case? To suggest that this motivation is improper, indeed, to suggest it is a factor to be taken into account in discrediting a complainant appears patently in error.

Conclusion

Shime was given the task of adjudicating the first sexual harassment complaint to be brought in the context of Canadian sex discrimination legislation. Given the complexity of the subject matter, one might have hoped that the decision would have shown more analytical insight. However, the deficiencies in the sex discrimination approach clearly indicate the need for more specific legislation. Such legislation would make sexual exploitation in the workforce the essential focus of concern. To that extent it would pinpoint the central issue rather than more abstract questions about the relationship between sexual harassment and sex discrimination.

On November 25, 1980, the Honourable R. G. Elgie, Ontario Minister of Labour, introduced to the Ontario Legislature Bill 209, An Act to revise and extend Protection of Human Rights in Ontario. This bill purports to prohibit sexual harassment on the job as well as between landlords and tenants. Many of the terms used in the bill are ambiguous; even if it is enacted, it may not provide a complete legal solution.²⁹ It will, however,

²⁹ S. 6 of the bill specifically attempts to deal with sexual harassment problems:

- 6(1) Every person has a right to be free from,
- (a) a persistent sexual solicitation or advance made by a person in a position of authority who knows or ought reasonably to know that it is unwelcome; or
 - (b) a reprisal or a threat of reprisal by a person in a position of authority for the rejection of a sexual solicitation or advance.

It appears that the drafters of the bill intended to prohibit outright only a sequence of repeated advances where the "person in a position of authority" knows the advance will be unwelcome, based on either a subjective or objective test. However, in the case of reprisals or threats of such, the word "persistent" does not appear in the bill, and it seems that a reprisal taken on the basis of non-compliance with even a single advance is unlawful. The concept of a "person in a position of authority" is not defined in the bill; this will undoubtedly create problems of interpretation in the future. Section 6 thus appears to contemplate the *quid pro quo* category of sexual harassment, as well as some "conditions of work" sexual harassment where there are unwanted, persistent sexual advances regardless of reprisals.

S. 4(2) of the bill may prohibit even a broader range of "conditions of work" sexual harassment: "Every person who is an employee has a right to freedom from harassment by the employer or his agent or by another employee in the workplace because of . . . sex." "Harassment" is defined in s. 9(g) as "engaging in a course of vexatious comment or conduct." It is not completely clear from the wording whether the "vexatious" quality is to be found in the viewpoint (subjective or objective) of the complainant or in the (subjective or objective) viewpoint of the alleged harasser. The phrase "a course of vexatious comment or conduct" indicates that repetitious behaviour amounting, it would seem, to a pattern of conduct, is required.

If the legislature enacts this bill it would eliminate the need for a searching legal analysis of whether sexual harassment constitutes sex discrimination. It may well provide a more clear-cut set of statutory guidelines for boards of inquiry in the future. Obvious problems of interpretation will arise as future boards of inquiry deliberate over the definition of "a person in a position of authority," "reprisal," and "persistent." As well, tribunals will have to address

focus public attention on the central issue—that sexual exploitation has no place in the workforce.

the difficult questions of an alleged harasser's motivation and recognition of the consequences of his acts, and the reasonableness of the victim's response to the conduct in question.