

## **SEXUAL HARASSMENT LAWS IN CANADA— IT'S ALL A QUESTION OF POWER**

**SHIRISH P. CHOTALIA, Barrister and Solicitor**

*Former Commissioner to Alberta Human Rights Commission*

### **ABSTRACT**

This is a comparative analysis of the laws of sexual harassment between Canada and the United States. American courts have tended to display a reluctance in dealing with employer liability, while the sheer volume of complaints before American courts have forced them to directly confront issues of standards of proof not yet in issue in Canada (i.e., the "reasonable woman" test which address power imbalances by focusing on the complainant's perspective, etc.).

The article introduces the topic through acknowledging the increased public interest and awareness of sexual harassment, and then provides a brief historical over-view of the law in Canada and the United States. Topics focus on actionability, legal definition of sexual harassment, employer liability, co-worker harassment, administrative structure, and remedy. Differences between the countries are identified. These differences form the basis for what lessons the two countries can learn from each other. The conclusion focuses on how the courts of the two countries can continue to develop sexual harassment laws in a positive and meaningful way.

The Hill-Thomas hearings raised public awareness of sexual harassment not only in the United States, but also in Canada. Numerous studies in both countries confirm that sexual harassment is persisting behavior [1]. Yet it has been only over the past several years that Canadian women have started to challenge such conduct as discrimination on the basis of sex pursuant to various anti-discrimination statutes [2]. American women began this challenge in the mid-1970s.

Accordingly, the law has rapidly developed and continues to develop in both countries. American courts have tended to display early in their course a conservatism in according liability to employers that contrasts with the Canadian judicial delineation of sexual harassment as harassment through power abuse. On the other hand, the sheer volume of complaints before American courts has forced them to

directly confront issues of standards of proof not yet in issue in Canada, such as the “reasonable woman” test, which address power imbalances by focusing on the complainant’s perspective.

## HISTORICAL OVERVIEW

As in the United States, the first Canadian complainants’ cases were unsuccessful. The same issues arose in both countries: does sexual harassment constitute discrimination on the basis of sex; is an employer liable for the sexual harassment by its employees toward other employees; does an employer’s knowledge of such conduct affect liability; does the plaintiff need to show tangible loss to succeed in a claim of the sexual harassment? [3] Eventually, the supreme courts of both countries confronted these issues.

## LAW IN CANADA

### Actionability

In the initial development of the law of sexual harassment, the tone of some Canadian cases was not unlike that in the early American cases [3]. Justices Huband and Twaddle of the Saskatchewan Court of Appeal confused sexual attraction with sexual harassment in *Janzen v. Platy Enterprises Ltd.* [4] prior to its reversal by the Supreme Court of Canada [5].

However, since *Janzen* [5], sexual harassment has been unequivocally judicially recognized as being discrimination on the basis of sex or gender. Further, now most Canadian statutes explicitly provide for protection against sexual harassment.

### Definition of Sexual Harassment

The Canadian Supreme Court, like its American counterpart, has promulgated a very broad definition of sexual harassment: sexual harassment is as an abuse of power and constitutes any unwelcome behavior of a sexual nature. The Court quoted the American case of *Meritor Savings Bank v. Vinson* [6] with approval, in holding that it is:

... unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment. It is ... an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being. [5, at 1284]

The Canadian court is less concerned about the American categorization of sexual harassment as either tangible benefit or quid pro quo harassment, and hostile or offensive working environment harassment, because actionability is no longer an issue [5, at 1284]. The focus of a Canadian inquiry is centered around whether or not the particular conduct was “welcomed” by the complainant from the alleged harasser [7], and not around her “voluntariness” [6]. The analysis is fact-dependent, although general legal guidelines regarding determination of “welcomeness” have been established. For example, in *Kotyk v. Canadian Employment and Immigration Commission* [8] the tribunal adjudicated that avoidance of physical closeness, persistent social invitation or sexual conduct of a superior is tantamount to notice that the behavior is not welcome by the complainant.

### Employer Liability

In Canada, the Supreme Court clearly defined employer liability as absolute. In *Janzen* [5] Justice Dickson adopted the Court’s earlier decision in *Robichaud v. Canada (Treasury Board)* [9], wherein the Court considered the liability of an employer for sexual harassment under the federal Canadian Human Rights Act, where the harassment was committed by a foreman. The relevant Canadian Human Rights Act stated:

7. It is a discriminatory practice, directly or indirectly,
  - (a) to refuse to employ or continue to employ any individual, or
  - (b) *in the course of employment, to differentiate adversely in relation to an employee*
 on a prohibited ground of discrimination.

[emphasis added]

The sole question that the Court dealt with was whether the sexual harassment could be attributed to the employer.

Justice La Forest began by analyzing the statute itself in regard to its purpose and nature [10]. The Supreme Court had already held that the act was to be interpreted in a generous and liberal fashion befitting the “special nature” of the legislation, so as to advance the broad policy considerations underlying it. The legislation was described as “not quite constitutional,” meaning that it incorporates certain basic goals of our society [11]. He found that the purpose of the act was “to give effect” to the principle of equal opportunity for individuals by eradicating invidious discrimination. It was not aimed primarily at punishing those who discriminate. The act was essentially concerned with the removal of discrimination, as opposed to punishing anti-social behavior, and therefore the motive or intent of those who discriminate is not central to its concerns [11].

Accordingly, the Supreme Court found that theories of employer liability developed in the context of criminal law or quasi-criminal law are inappropriate: “These are completely beside the point as being fault-oriented, for, as we saw, the

central purpose of a human rights act is remedial—to eradicate anti-social conditions without regard to the motives or intention of those who cause them” [9, at 91]. He also disposed of the argument that a tort-based vicarious liability approach is relevant by the same observation that it “. . . cannot meaningfully be applied to the present statutory scheme.” He discerned that in torts liability is aimed at activities done within the confines of the job a person is engaged to do. This is distinguishable from sexual harassment that is not referable to what an employee is employed to do. Given the purpose of the legislation, of removing certain undesirable conditions in the workplace:

. . . it would seem odd if under s. 7(a) an employer would be liable for sexual harassment engaged in by an employee in the course of hiring a person, but not be liable when that employee does so in the course of supervising another employee, particularly an employee on probation. It would appear more sensible and consonant with the Act to interpret the phrase “in the course of employment” as meaning work or job-related, especially when that phrase is prefaced by the words “directly or indirectly” [9, at 92].

He further supported his argument by reviewing the legislative remedies and noting that they were remedial in nature rather than punitive or liability oriented [12]. The Court found that the legislative emphasis on prevention and elimination of undesirable conditions, rather than on fault, moral responsibility, and punishment, argues for making the act’s carefully crafted remedies effective. Justice La Forest then stated:

Indeed, if the Act is concerned with the *effects* of discrimination, rather than its *causes* (or motivations), it must be admitted that only an employer can remedy undesirable effects; only an employer can provide the most important remedy—a healthy work environment [9, at 92].

He concurred with Justice Marshall, who was joined by Justices Brennan, Blackmun and Stevens, in *Meritor Savings Bank v. Vinson* concerning sexual discrimination by supervisory personnel:

An employer can only act through individual supervisors and employees; discrimination is rarely carried out pursuant to a formal vote of a corporation’s board of directors. Although an employer may sometimes adopt company-wide discriminatory policies violative of Title VII remedies, such a reinstatement and backpay generally run against the employer entity . . . [6, at 2410-2411].

A supervisor’s responsibilities do not begin and end with the power of hire, fire, and discipline employees, or with the power to recommend such actions. Rather, a supervisor is charged with the day-to-day supervision of the work environment and with ensuring a safe, productive workplace. There is no

reason why abuse of the latter authority should have different consequences than abuse of the former. In both cases it is the authority vested in the supervisor by the employer that enables him to commit the wrong: it is precisely because the supervisor is understood to be clothed with the employer's authority that he is able to impose unwelcome sexual conduct on subordinates [6, at 2410-2411].

Through this purposive approach, the Canadian Supreme Court concluded that the statute requires that employers be held liable for the discriminatory acts of their employees where those actions are "in some way related or associated with the employment" [6, at 11]. The Court held that the conduct of an employer is theoretically irrelevant to the imposition of liability, but may go to damages.

### **National Differences**

The difference in accordance of liability between the Supreme Court of the United States and that of Canada is significant. In *Meritor* the American Supreme Court declined to issue a "definitive rule on employer liability" and rejected both the court of appeal's rule of automatic liability and the employer's submission that notice is always required<sup>1</sup>. Given that no "definitive rule" has been embraced, American courts may wish to utilize the Canadian approach of broad and liberal interpretation of Title VII of the Civil rights Act of 1964 [13], rather than restricting themselves to compartmentalization of these laws into traditional areas of tort or criminal law. In other words, American courts should be willing to embrace and promulgate human rights laws as constituting an independent area of law with special rules of interpretation supporting the fundamental importance of these laws. They should depart from confining themselves to inapplicable precedents from other areas of law, such as vicarious liability in tort law and organic theories of liability in corporate law. Rather, in the Canadian tradition, human rights laws should be judicially recognized as being laws governing private relations that are akin to constitutional laws protecting constitutional rights and liberties. Accordingly they should be given broad and liberal interpretation.

### **Co-worker and Non-employee Harassment**

In Canada the issue of employer liability for co-worker and non-employee harassment is not entirely resolved. However, it is submitted that through the broad purposive Canadian approach of holding the employer liable for ensuring that employees do not abuse power (either real or perceived) courts will accord liability to the employer in such cases.

<sup>1</sup>There are a number of decisions that state that in quid pro quo sexual harassment cases the employer is directly liable for employee acts irrespective of whether it had knowledge or had approved the conduct, e. g., *Dibernardo v. Waste Management Inc. of Florida* ( ) 838 F. Supp. 567.

For example, in *Janzen* [5] Chief Justice Dickson held the corporate employer/manager liable for a cook with supervisory duties, held out by the management as having control over the firing of employees. The Supreme Court held that the actions of the harasser were “work related” [14]. “It was the employer’s responsibility to ensure that this power was not abused. This it clearly did not do, even after the appellants made specific complaints about the harassment” [5, at 1294].

It is heartening to see positive developments from lower courts and boards following the “broad and liberal” interpretation directives of the Supreme Court. For example, in *Wiligan v. Wendy’s Restaurants of Canada Inc.* [15] the British Columbia Council of Human Rights rejected the argument that the employer was not liable for the sexually harassing acts of a non-supervisory co-worker. It held the employer liable for the acts of the co-worker for poisoning the work environment and found support from the *Janzen* decision, wherein the Supreme Court questioned the validity of the distinction between quid pro quo and hostile environment harassment. Recently *Thessolinki Holdings Ltd. v. Saskatchewan Human Rights Commission* [16] has confirmed employer liability for the acts of a co-worker based on the liberal judicial writing of the Supreme Court. *Skelly v. Re-Max Realty* [17] further expanded the ambit of liability. It held that the arrangement between a realtor and her real-estate company, whereby she received 100 percent of the commission but had to pay certain annual and monthly fees, was one of “employment” within the meaning of the relevant British Columbia antidiscrimination statute. It was also held that the relationship between two realtors not economically related to each other was nonetheless one encompassed by the statute: “. . . the fact that Karp [second realtor] is not the Complainant’s employer does not preclude him from occupying a position of power vis-a-vis the Complainant” [17, at 14].

## **Administrative Structure and Remedy**

In Canada pursuant to the constitutional division of powers between the federal and provincial governments, both levels of government have enacted civil rights legislation in their respective spheres. Most administrative structures operate on a complaint-driven basis, wherein a complainant lodges a complaint with the relevant office. Thereafter the officer investigates and attempts to resolve the issues either formally or informally. If settlement is not possible, the complaint is reviewed by the commission, which may find sufficient evidence to warrant directing the complaint to a quasijudicial administrative body for determination. The commission becomes a party to the complaint, and provides inhouse specialized legal counsel to act for the complainant before the tribunal or board. Accordingly, the complainant does not have to carry legal costs as she may have to in some cases in the United States.

While the American Civil Rights Act of 1991 provides that a complainant may recover compensatory and punitive damages [18] in addition to prevailing party and other costs, the Canadian complainant rarely receives large general damage awards. She is entitled by statute to an award of lost wages and other remedial actions (such as the posting of a sexual harassment policy at the workplace). Unfortunately, general damage awards are relatively small in size even in jurisdictions where they are clearly available by statute [19]. In other jurisdictions there has been a questioning of the very ability of boards to award general damages [20]. This is particularly troublesome because the Canadian administrative process forecloses a private civil suit of sexual harassment [21], although a parallel civil action for wrongful dismissal and/or sexual assault, which has potentially larger damage awards, can proceed. In practice, the respondent asks for an absolute waiver of liability regarding any settlement negotiated by the commission with respect to a claim of sexual harassment. The respondent can thereby force the complainant to waive other civil actions with potentially larger monetary claims if the complainant chooses to act only through the commission.

The Canadian administrative structure, which provides an educational and advocacy mandate to the enforcing commissions, is accessible to complainants. However, Canadian legislators need to review American provisions of damage awards, in order to entrench appropriate remedies.

### **LESSONS FOR CANADA FROM RECENT DEVELOPMENTS IN AMERICAN LAW**

Recent American court decisions are reflecting increasing judicial sensitivity to the factual and evidentiary problems of sexual harassment cases. Canadian courts have imputed an element of constructive knowledge to the harasser in the requirement that a "reasonable person" should have known that the behavior was unwelcome [22]. Although some Canadian commentators have called for the use of a "reasonable victim" standard [23] American courts have already moved to a "reasonable woman" standard. In *Ellison v. Brady* [24], the court stated that in "evaluating the severity and pervasiveness of sexual harassment, we should focus on the perspective of the victim". It held that a female plaintiff states a prima facie case of hostile environment sexual harassment when she alleges conduct a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. In *Robinson v. Jacksonville Shipyards* [25] the court acknowledged that there are significant differences in perceptions between men and women as to what constitutes sexual harassment. In this case the female complainant alleged harassment due to the number of calendars portraying females (nude or seminude) in provocative positions; lewd, suggestive, and offensive behavior and language of co-workers and supervisors; and the failure of management to respond to her complaint. Expert evidence was led that such materials and conduct "sexualize" the

workplace and reinforce the view that women are sexual objects, and further that women are more significantly affected by the “sexualization” of the workplace than men. Expert evidence was also led that coping mechanisms include denial of the behavior, absenteeism, apparent acceptance of the behavior, and further that sexual harassment affects women more adversely than men [26]. Given that differences in perception are often attributed to differences in power or perceived power, it is hoped that Canadian courts will be prepared to utilize such a standard, as well as to hear and accept such expert evidence.

## CONCLUSION

Canadian courts have taken a “near constitutional” view of civil rights legislation and have identified sexual harassment as an abuse of power [27]. This recognition has impacted not only on the court’s definition of sexual harassment, but also on the issue of employer liability, which remains unresolved in the United States. American courts have not traditionally utilized Canadian case law; however, the value of considering extra jurisdictional authority is clear [28]. American courts can broaden their approach and utilize an approach wherein civil rights legislation is given special contextual consideration akin to constitutional laws. Indeed, the greatest risk of discriminatory actions does not necessarily come from the government, but rather from the private sector.

On the other hand, Canadian courts have very often referred to American jurisprudence in developing Canadian law. American damage awards and American civil rights cases and legislation should continue to be studied by Canadian courts and Canadian legislators. On the evidentiary front, Canadian courts ought to embrace the American “reasonable woman” standard, because it implicitly reflects the view of both countries that sexual harassment is a form of power abuse.

\* \* \*

B. A., L.B., L1.M., Alberta Bar, Author of *The Annotated Canadian Human Rights Act, 1994*, Carswell Thompson Publishing, and Former Commissioner to Alberta Human Rights Commission.

## END NOTES

1. See *Sexual Harassment in the Workplace Law and Practice*, A. Conte (1990) pp. 1-4, John Wiley and Sons, Inc., New York and Canada. See also *Sexual Harassment in the Workplace*, A. Aggarwal, (2d) (1992) pp. 4-6, Butterworths Canada Ltd.
2. *Discrimination and the Law*, Tarnopolsky William and Pentney, William (1985) pp. 8-18, Richard DeBoo Publishers, Ontario.



3. See *Corne v. Bausch & Lombe*, 390 F Supp 161, Arizona, 1975, wherein the court dismissed the plaintiffs' allegations that they had been sexually discriminated against due to the verbal and physical sexual abuse by their male supervisor. The district court rejected the claim on the basis that discrimination is only actionable under the statute if it arises out of company policies, and not if it arises from the "personal proclivity, peculiarity or mannerism" of a supervisor "who was satisfying a particular urge." The judge professed the "flood gates" argument: that there was danger of a "potential federal law suit every time any employee made amorous or sexually oriented advances toward another" and that the "only sure way an employer could avoid such charges would be to have employees who are asexual." Later courts relied upon *Corne* to find that sexual abuse was a product of interpersonal strife not subject to federal law, and that even if conduct were actionable, the plaintiff needed to show tangible loss benefit and employer knowledge of the supervisor's conduct.
4. 8 C.H.R.R. d/3831 (1987). Associate Justice Twaddle concluded that sexual harassment based on the "sex appeal" of the victim could not constitute sex discrimination (p. D/3846), while Associate Justice Huband stated "I am amazed to think that sexual harassment has been equated with discrimination on the basis of sex . . . I am amazed to think that an employer could be held vicariously responsible for that form of discrimination on the part of an employee, or that a corporate employer could be found 'personally responsible' for a sexually malevolent employee, except under the rarest of circumstances." (p. D/3832) This decision has been widely criticized; e.g.: see M. Burka. "Sexual Harassment: Manitoba's Step Backward—A Case Comment on *Govereau and Janzen v. Platy Enterprises Ltd.*" *Man. Law J. v. 16*, n. 3, Spring 1987, pp. 245-253; M. A. Hickling, "Employer's Liability for Sexual Harassment" *Man. Law J. v. 17*, n. 2, Winter 1988, pp. 124-155; I. F. Ivanokovich, "Sexual Harassment in the Workplace—Two Steps Backward: *Janzen & Govereau v. Platy Enterprises Ltd.*" *Alta. Law Rev. V. 26*, n. 2, 1988, pp. 359-371; "Serious Setback for women Across the Country: Justices Wipe out Sex Harassment Protections" *Canadian Human Rights Advocate v. 3*, n. 1, Jan. 1987, pp. 1-2.
5. *Janzen v. Platy Enterprises Ltd.* 1 S.C.R. 1252 (1989).
6. 477 U.S. 57 (1986). Here the United States Supreme Court held in the unanimous decision on this point that "without question" sexual harassment is a form of sex discrimination and that hostile environment as well as quid pro quo harassment violate Title VII of the Civil Rights Act. Therefore, one need not show tangible economic loss in order to bring an action. Recently, the American Supreme Court, in *Harris v. Forklift Systems* 114 S.Ct. 367 (1993), has unanimously decided that an employer can be forced to pay monetary damages even when the employee who suffers sexual harassment suffers no psychological harm. Justice Sandra O'Connor wrote on behalf of the Court "so long as the environment would reasonably be perceived, and is perceived as hostile or abusive there is no need for it to also be psychologically injurious." For analysis of the case see B. B. Brown and I. L. Germanis "Hostile Environment Sexual Harassment: Has *Harris* Really Changed Things?" 19 *Employee Rel. L. J.* 567 (1994); R. K. Robinson, R. L. Fink and B. Morgan "Unresolved Issues in Hostile Environment Claims of Sexual Harassment" 45 *L. L. J.* 110 (1994).
7. *Re Canada Post Corp. and Canadian Union of Postal Workers (Gibson)*, 27 L.A.C. (3d) 27 (1987).

8. 4 C.H.R.R. d/1416 (1983).
9. 2 S.C.R. 84 (1987).
10. The purpose of the act is to extend the laws of Canada to ensure that every individual has an equal opportunity to live free of discriminatory practices on the grounds of sex *inter alia* (section 2).
11. See *Ontario Human Rights Commission and O'Malley v. Simpsons Sears Ltd.* [1985] 2 SCR 536.
12. The tribunal may make an order against the discriminating person: a) that such person cease such discriminatory practice and, in consultation with the commission on the general purposes thereof, take measures, including adoption of a special program, plan, or arrangement . . . , to prevent the same or similar practice occurring in the future; b) that such person make available to the victim of the discriminatory practice on the first reasonable occasion such rights, opportunities or privileges as, in the opinion of the tribunal, are being or were denied the victim as a result of the practice; c) that such person compensate the victim, as the tribunal may consider proper, for any or all of the wages that the victim was deprived of and any expenses incurred by the victim as a result of the discriminatory practice; and; d) that such person compensate the victim, as the tribunal may consider proper, for any or all additional cost of obtaining alternative goods, services, facilities or accommodation and any expenses incurred by the victim as a result of the discriminatory practice. (emphasis added). In addition, the tribunal may order compensation to the victim not exceeding five thousand dollars if it finds that the respondent was "wilful" or "reckless," or the victim suffered in respect of feelings or self-respect because of the practice.
13. U.S.C. 2000 e-2(a). It shall be an *unlawful employment practice* for an employer 1) to fail or refuse to hire or to discharge any individual, or otherwise to *discriminate against any individual with respect to* [her or] his compensation, terms, conditions, or privileges of *employment*, because of such individual's . . . sex . . . ; or 2) to *limit, segregate, or classify* [her or] his employees or applications for employment *in any way which would deprive or tend to deprive any individual of employment opportunities* or otherwise adversely affect [her or] his status as an employee, because of such individual's . . . sex.
14. His opportunity to harass the complainants was directly related to his employment position as the next in line in authority to the employer; he used his position of authority, a position accorded to him by the corporate employer, to take advantage of the complainants; the authority granted to him, both through his control in running the restaurant, including his control over food orders and work hours, and through his purported ability to fire waitresses, gave him power over the waitresses. [5, at 1293]
15. 11 CHRR D/119 (B.C. 1990).
16. 91 CLLC para. 17,029 (Sask. Q.B.) (1991).
17. (B.C. Council on Human Rights) unreported 1991.
18. Complainant to demonstrate that respondent acting with malice or "reckless indifference" to the federally protected rights.
19. The federal human rights statute allows for an award not exceeding \$5000 for willful or reckless discrimination or for suffering of feelings and loss of self-respect. British Columbia has a \$2000 ceiling for additional damages, while Saskatchewan has a \$5000 ceiling. Ontario has a \$10,000 ceiling for mental anguish. The Yukon Territories, New Brunswick, and Nova Scotia, allow for general and exemplary damages without a ceiling, while

- Manitoba specifically provides for punitive damages. Quebec provides for "any appropriate measure against the person at fault" or "any appropriate measure of redress." Newfoundland allows the board to take "whatever other action" it considers appropriate. Prince Edward Island limits the board of inquiry to providing recommendations to the commission, which may make recommendations to the minister regarding appropriate remedial action.
20. In Alberta, in *Wong v. Hughes Petroleum Ltd.* 4 C.H.R.R. d/1488 (Q.B.) (1983) the court concluded that the Alberta statute does not give a board of inquiry jurisdiction to award general, punitive, or exemplary damages. Later, a lower board in *Splett v. Sum's Family Holdings Ltd.* 13 C.H.R.R. D/119 (1988) awarded \$15000 for mental distress to a victim of sexual harassment.
  21. *Seneca College v. Bhadauria* 124 D.L.R. (3d) 193 (SCC) [1981].
  22. *Fields v. Willie's Rendezvous Inc.* (1985) 6 C.H.R.R. D/3074; See also *Potapczyk v. MacBain* (1984) 5 C.H.R.R. D/2285.
  23. K. Gallivan, "Sexual Harassment After *Janzen v. Platy*: The Transformative Possibilities" (1991) Univ. Toronto Fac. Rev. p. 3074 and D/2285.
  24. 924 F.2d 872, 54 FEP 1346 (U.S. C.A. 9th Circuit) (1991).
  25. 54 FEP 83. See also *Kaufman v. Allied Signal Corp.* 970 F.2d 178 (6th Cir. 1992) cert. denied, 113 S.Ct. 831 (1993) (C.A.); *Yates v. Avco Corp.* 819 F.2d 630 (6th Cir. 1987) (C.A.); *Carrillo v. Ward* 770 F. Supp. 815, 822 (S.D.N.Y. 1991) (2nd Cir. Dist. Ct.); *Vermette v. Hough* 627 F. Supp. 587, 605 (W.D. Mich. 1986) (Dist. Ct.) using the reasonable woman test; contra, for objective test see *Rabidue v. Osceola Refining Co.* 805 F.2d 611 (6th Cir. C.A. 1986); *Andrews v. City of Philadelphia* 895 F.2d 1469 (3rd Cir. 1990); for an objective and subjective test combined see *Dockter v. Rudolf Wolff* 913 F. 2d 456, 459 (7th Cir. 1990); *King v. Board of Regents* 898 F. 2d 533, 537 (7th Cir. 1990); & *Brooms v. Regal Tube* 881 F.2d 412, 418-19 (7th Cir. 1989).
  26. See "How Employees Perceive Sexual Harassment" (survey graphs) *Harvard Bus. Rev.* 70:23 Mr-Apr 1992.
  27. Unfortunately, a recent decision of the Canadian Supreme Court appears to reflect a more conservative court vis a vis interpretation of civil rights statutes in general: *Dickason v. The Governors of the University of Alberta et al.* September 24, 1992 (unreported) (SCC). (This case dealt with mandatory retirement in the University context, and the test for the employer to meet in establishing "reasonable and justifiable" discrimination.)
  28. See Joseph M. Pellicciotti, "Canada's Approach to Eradicating Workplace Sexual Harassment: The Canadian Supreme Court's *Janzen v. Platy Enterprises Ltd.* and its Relationship to the United States Supreme Court's *Meritor Savings Bank v. Vinson*," Volume 14 *Loyola of Los Angeles International and Comparative Law Journal*, p. 237 (1992).

Direct reprint requests to:

Shirish P. Chotalia  
 Pundit & Chotalia  
 Barristers & Solicitors  
 808 Oxford Tower  
 10235-101 St.  
 Edmonton, Alberta T5J 3G1