

# Helping Clients with a Workplace Sexual Harassment Case



Law Foundation Provincial Training Conference  
Presentation by Jennifer Khor and Juliana Dalley  
November 12, 2020

# Land Acknowledgment

We respectfully acknowledge we are working and learning on the traditional, unceded, and ancestral territories of the x<sup>w</sup>məθk<sup>w</sup>əyəm (Musqueam), səlilwətaʔl (Tsleil-Waututh), and Skwxwú7mesh Úxwumixw (Squamish) Nations.

We're happy to have people attending this presentation and working from many different territories across BC!

# Introductions

Jennifer Khor, lawyer, SHARP Workplaces

Juliana Dalley, lawyer, Migrant Workers Centre



# A Note Before We Begin

- This presentation deals with topics that could possibly cause distress or discomfort.
- If you need to step away or leave today's presentation, for any reason, it is perfectly alright.
- There are opportunities to ask questions and interact in this presentation but you are under no obligation to participate.
- Please keep interactions here respectful to all.
- This presentation is for informational purposes only and is not legal advice.

# Objectives of Presentation

- Introduce our programs and organizations
- Recognize workplace sexual harassment
- Understand the legal options for someone dealing with workplace sexual harassment
- Describe services offered through SHARP Workplaces and the Respect at Work Legal Clinics & how to access them
- Discuss creating/strengthening referral networks



Advancing Dignity, Equality and Justice Since 1971

- CLAS is a non-profit organization that has been serving people in BC since 1971. CLAS provides legal assistance and works to advance the law to address the critical needs of those who are disadvantaged or face discrimination.

# SHARP Workplaces

- Partnership between CLAS and Ending Violence Association of BC (EVA BC)
- Two components to address workplace sexual harassment in BC:
  - 1) Legal advice
  - 2) Education, information and training
- Funded by Department of Justice Canada until March 2024



- Migrant Workers Centre is a non-profit organization dedicated to legal advocacy for migrant workers in BC.
- Mission is to facilitate access to justice for migrant workers through legal information, advice, and representation and advance the rights of migrant workers through education and law and policy reform.



# Respect at Work Legal Clinic

- Free summary legal advice clinic for newcomers who have faced sexual harassment at work.
- Partnership with ISS of BC
- Can book appointment with a legal advocate or staff lawyer
- Education, information and training for individuals and service providers

# What is Workplace Sexual Harassment?

Using typed chat or on video (unmute your microphone), we invite your responses:

- How would you define or describe workplace sexual harassment?
- What are some examples of workplace sexual harassment?

# Workplace Sexual Harassment Examples

## Unwelcomed sexual behavior:

- Touching, patting or hugging
- Sexual staring, gestures, teasing, or jokes
- Showing sexual or suggestive materials, including sexting
- Repeated unwanted invitations or attention
- Pressure to accept sexual behavior to get hired, keep your job or get a promotion
- Disrespectful comments about someone's gender presentation
- Sexual assault

## Who?

- Supervisor, co-workers, clients, customers, contractors, people connected with work.

## Where?

- At work or connected to work (conference, social outing, social media, coffee break outside office, working from home, Zoom...)

# What is Workplace Sexual Harassment?

- Unwelcome **conduct of a sexual nature**
- Leads to **adverse job-related consequences**
- Does not require **intent**

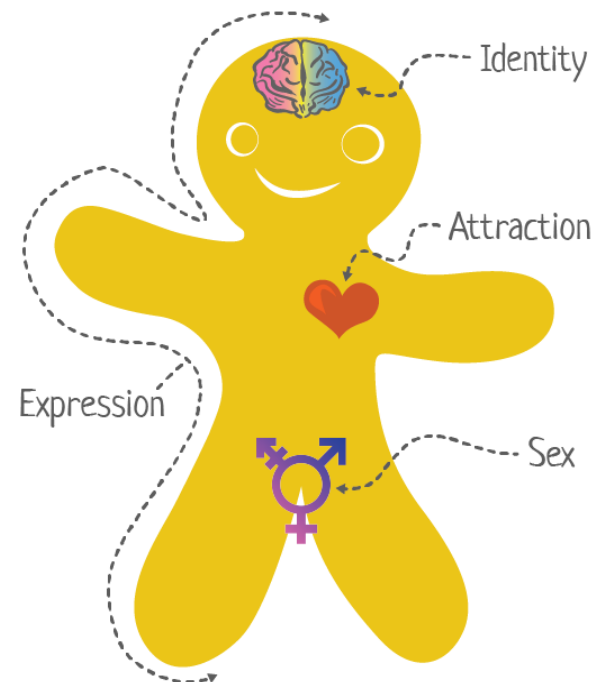
*Janzen v. Platy Enterprises*, [1989] 1 SCR 1252, 59 DLR (4<sup>TH</sup>) 352

# Workplace Sexual Harassment Basis

Workplace Sexual harassment can be based on:

- Sex
- Sexual Orientation
- Gender Identity
- Gender Expression

The Genderbread Person v4 *by its pronounced METROsexual.com*



# Workplace Sexual Harassment Basis

Workplace Sexual Harassment can involve:

- Bullying
- Silencing
- Harassing
- Psychological abuse
- Abuse of power

*“There is a broad range of conduct that falls within the definition of sexual harassment...”*

*One common theme is that sexual harassment is ultimately about an abuse of power”*

*The Employee v. The University and another (No. 2), 2020 BCHRT 12*

*Consider the interrelationship between intersecting grounds of discrimination and possibility of compound discrimination – the complainant is a “whole person”*

# Trauma-Informed Practice Approach

- Integrating knowledge about how people are affected by trauma into our procedures, practices, and services.
- Emphasize safety, trustworthiness, choice, connection, collaboration, strengths, and skill building.
- Staff and roster lawyers receive training & education on how to serve clients with a trauma-informed lens.

# What you can do if experiencing sexual harassment

- Keep notes and records.
- Consider making an internal report
  - Bullying and harassment or anti-discrimination policy
  - Contact a prevention officer
- Seek legal advice.



# Legal Options



# Human Rights Tribunals

- The Human Rights Code prohibits discrimination
- **Discrimination** is an action or a decision that results in negative treatment towards a person or a group on the basis of their protected characteristics, such as their race, place of origin, sex, gender identity or expression, or disability.
- Sexual harassment is sex discrimination, so it contravenes the Human Rights Code.
- Harassment may also be connected to other protected grounds

# Filing a Human Rights Complaint

- Can file a complaint with the BC Human Rights Tribunal (or Canadian Human Rights Commission).
- Potential remedies:
  - Lost wages and expenses
  - Damages for “injury to dignity”  
(CHRT: “pain and suffering” and “wilful or reckless”)
  - Return to position or reassignment
  - Order that an employer stop discriminatory practices
  - Order for employer to develop policy or require training
- Protection from retaliation

# WorkSafe BC

- WorkSafeBC is responsible for workplace health and safety in BC. A safe workplace is **free from bullying and harassment**.
- Potential harassment-related claims:
  1. “Prohibited action”
    - ❖ A worker has experienced negative employment consequences (i.e. termination) as a result of reporting a health and safety issue (i.e. harassment).
  2. Compensation
    - ❖ A worker has a diagnosed mental disorder that is predominantly caused by a work-related stressor (i.e. harassment).

# WorkSafe BC

- Prevention Information Line: 1.888.621.7233 (1.888.621.SAFE)
  - Can get information and advice from Prevention Officer about occupational health and safety
  - Can request a site visit from an officer
- Claims Process: 1.888.967.5377 (1.888.WORKERS)
- Can file a prohibited action complaint to WorkSafeBC online at <https://www.worksafebc.com> or by mail or fax

# Civil Claims & Employment Standards Complaints

- Claim in court for **wrongful termination** or **constructive dismissal**.
  - Forced to quit due to intolerable working conditions.
  - Can claim compensation based on length of time they have worked for their employer, aggravated damages, and compensation for expenses (i.e. counselling, etc.).
- Complaint with **Employment Standards Branch (ESB)**
  - Compensation based on length of service.
  - May also be able to claim for unpaid overtime wages & other violations.

# Criminal Complaint

- Depending on the circumstances, sexual harassment may be a criminal offence under the *Criminal Code*:
  - Sexual assault
  - Criminal harassment
  - Uttering threats, other offences
- Call the police to report a crime and for immediate safety concerns
  - Peace Bond (s. 810 Criminal Code).
  - Third Party Report (through Community Agency)
- Prosecutor (crown) decides to proceed, complainant becomes a witness

# Criminal Complaint

- VictimLinkBC
  - Toll-free, confidential phone service available across B.C. 24 hours a day, 7 days a week at with service in 110 + languages.
  - Provides information and support to victims of crime.
  - 1-800-563-0808
- Crime Victims Assistance Program (CVAP)
  - Provides benefits to help victims of crime offset financial losses and assist in recovery.



# Employment Insurance

- Option for income support if client cannot continue working or cannot return to work due to sexual harassment
- **Regular benefits**
  - Sexual or other harassment generally considered to be “just cause” for leaving employment
  - Can get up to 45 weeks of benefits
  - Must be available for work
- **Sickness benefits**
  - Need a medical certificate certifying claimant is unable to work for medical reasons
  - Can get up to 15 weeks of benefits

# Immigration Issues

- Newcomers to Canada may be vulnerable to sexual harassment in the workplace along with other forms of abuse
- Precarious immigration status – increases the power imbalance between employers and workers
- Options for newcomers with precarious immigration status facing sexual harassment:
  - Open Work Permit for Vulnerable Workers
  - Temporary Resident Permit, including for Victims of Trafficking in Persons
  - Humanitarian and Compassionate application for permanent residence
  - Etc.

# Limitation Periods

- **BCHRT Complaint:** 1 year (from last act of discrimination, if continuing contravention)
- **WSBC:** 1 year from date of injury or prohibited action
- **ESB Claims:** 6 months from last day of employment
- **Civil Lawsuits:** 2 years
- **CVAP claim:** 1 year
- **EI claim:** 4 weeks of last day of work
- **Criminal complaint:** no deadline

*May be able to ask decision-maker to exercise discretion to accept a late-filed claim*

# SHARP Workplaces Legal Advice Clinic

<https://www.youtube.com/watch?v=VB9LiMEY5eo&t=3s>

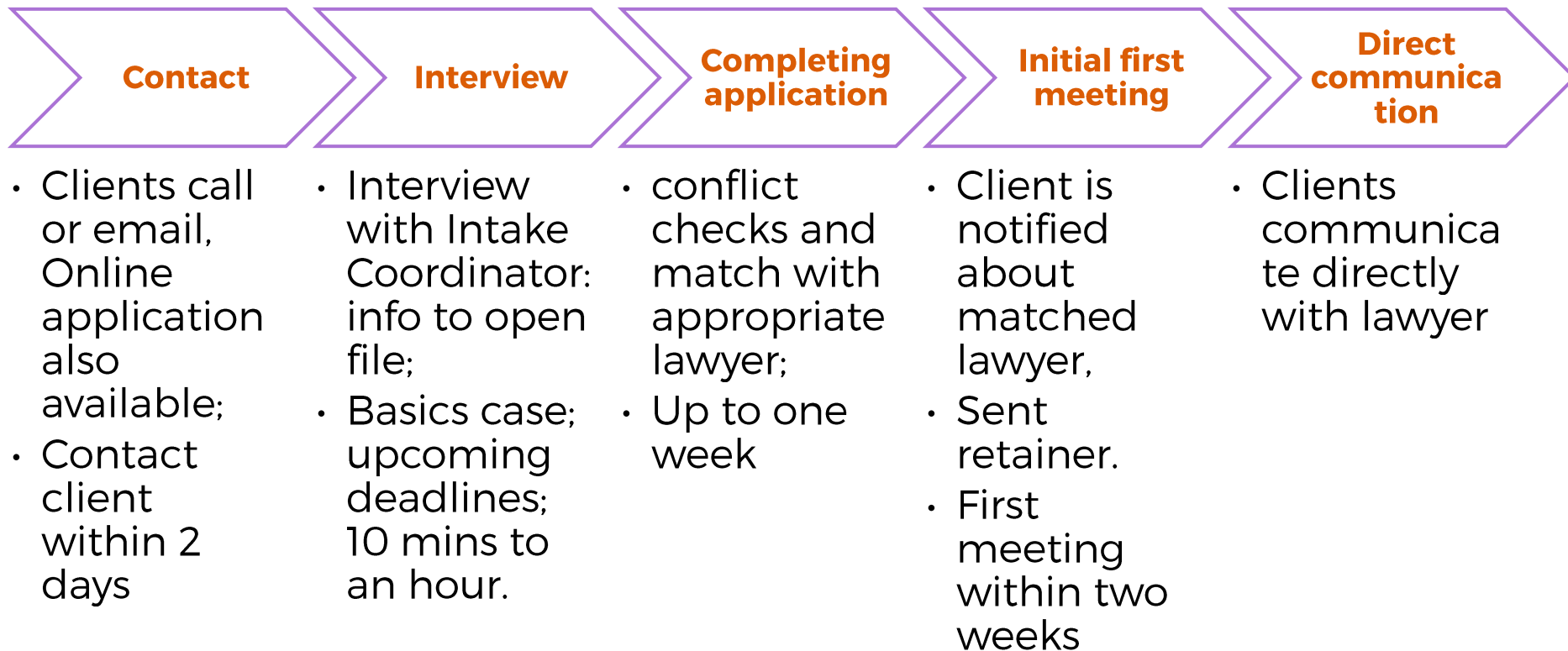
Available on website:

<https://clasbc.net/get-legal-help/sexual-harassment-in-the-workplace/>

# SHARP Workplaces Legal Advice Clinic

- Up to five (5) hours of free, confidential legal advice from a lawyer. Extensions are common.
- Available to **anyone** in BC who has experienced sexual harassment at work (no low-income requirement)
- We also provide **referrals** to appropriate support services, such as counselling.
- Services will be provided by staff lawyers and contract private lawyers.
- Internal referrals to HRC and CLP when appropriate

# SHARP Workplace s Intake Process



Process can be faster

# Respect at Work Legal Clinic

- Provides free legal advice for newcomers who have faced sexual harassment
- Temporary foreign workers, international students, undocumented workers, permanent residents or naturalized Canadian citizens can receive legal advice from a staff lawyer or legal advocate
- To book an appointment, can call 604-669-4482 or email [info@mwcbbc.ca](mailto:info@mwcbbc.ca)
  - Can also call our hotline at 604-404-1931 for legal information and to book an appointment
    - Tuesday and Thursday, 9:00am to 8:00pm
    - Wednesday, Friday, Saturday; 9:00am to 5:00pm

# Respect at Work Legal Clinic

- Coordinates with our Legal Advocacy Program, through which Migrant Workers Centre can provide **full representation** to migrant workers who have faced workplace sexual harassment
- Can provide representation in Employment Standards complaints, immigration applications including permanent residency applications, work permit applications, temporary resident permit applications, and other proceedings on a case-by-case basis.
- Holistic approach to support workers with precarious immigration status
- If client does not qualify for full representation through our Legal Advocacy Program, will facilitate referrals



## How our programs can help

- Advice on whether the conduct is sexual harassment.
- Advice on legal options and possible remedies.
- How to address sexual harassment in the workplace, if the client wishes to address it.
- Assistance with reviewing or drafting documents.
- Coaching to guide clients through a complaint or legal process.
- Referrals to services for additional support, such as counselling, employment services

# What information is helpful for a client to have before calling us?

- A timeline of what happened, with dates if possible, and names of people involved
- Copies of any relevant documents (such as termination letters, work contract, legal documents, letters from the Human Rights Tribunal, etc.)
- If you have already started a process, any upcoming deadlines

# Case Studies: Breakout Rooms

# Case studies discussion questions:

1. Is this workplace sexual harassment? Why or why not?
2. What advice would you give the client?
3. What other information do you need?

# Case study 1: Janice

Janice is a 42-year-old Indigenous woman who works as a retail clerk at the Vernon branch of Smallmart. She says her supervisor is too strict on breaks and makes rude remarks to the women on her team, saying things like “sorry girls, I don’t mean to cut down on your chat and makeup time.” She says people feel uncomfortable with this supervisor, and she left her job.

Janice says she is worried about paying her rent as there aren’t many jobs in Vernon but she couldn’t stay at work as she was not sleeping well and feeling anxious. She applied for Employment Insurance but was turned down because she quit.

## Case Study 2: Maria

Maria, who has recently come to Canada, works as a live-in nanny and cleaner. She identifies as lesbian. The husband in the home where Maria works often makes comments about her appearance and tells her she should dress more “feminine”. He even offers to set her up with a male relative of his so that she can immigrate to Canada. Maria laughs it off and says she is not interested but these comments make her uncomfortable and upset.

Maria also occasionally cleans the house of the husband’s father, George. George greets Maria and says good-bye with hugs. Maria says George is lonely. Lately, the hugs have become longer and it felt like a few times he brushed her buttocks and breasts when releasing from the hugs. She isn’t sure, it might have been accidental.

Maria mentioned this to the employment agency that arranged her job, but they told her that if she complained or quit, she would have to leave Canada. Maria does not want to say anything because she does not want to lose her job or have to leave Canada, especially since there have been recent reports of violent attacks on LGBTQ people in her home country.

# Case study 3: Kennedy

Kennedy volunteers three days a week doing administrative work at a youth non-profit. The non-profit is a social workplace that holds annual optional holiday work social events. Alex, the spouse of the executive director Billie, has invited all employees to Billie's big 60<sup>th</sup> birthday, along with relatives and other friends. Jaimie isn't a huge fan of parties but wants to support Billie and Alex. With the pandemic, Alex holds the party at a large outdoor venue; a screen is set up with Zoom so family who live in other provinces could join.

While at the party, Jaimie meets a friend of Alex named Taylor. Jaimie thinks Taylor is funny and attractive. They joke around; some jokes have sexual innuendos. Taylor is friendly but begins to invade Jaimie's personal space; makes comments about Jaimie's body while grabbing Jaimie's waist and hips. Jaimie tries to walk away but Taylor keeps following. The situation ends with Taylor groping Jaimie's chest and buttocks area and Jaimie pushing Taylor away and saying "stop!" Taylor apologizes to Jaimie and says they must've drunk too much.

# Case study 4: Ahmed

Ahmed came to Canada as a resettled refugee from Iraq. He works for a construction company and is assigned to a major project involving several other companies. Soon, one of the other workers onsite who works for one of the other companies involved in the project, Bob, starts singling him out, including calling him names like “terrorist” and making homophobic comments. Ahmed tries to ignore his behaviour but it starts getting worse. Ahmed begins having nightmares and flashbacks.

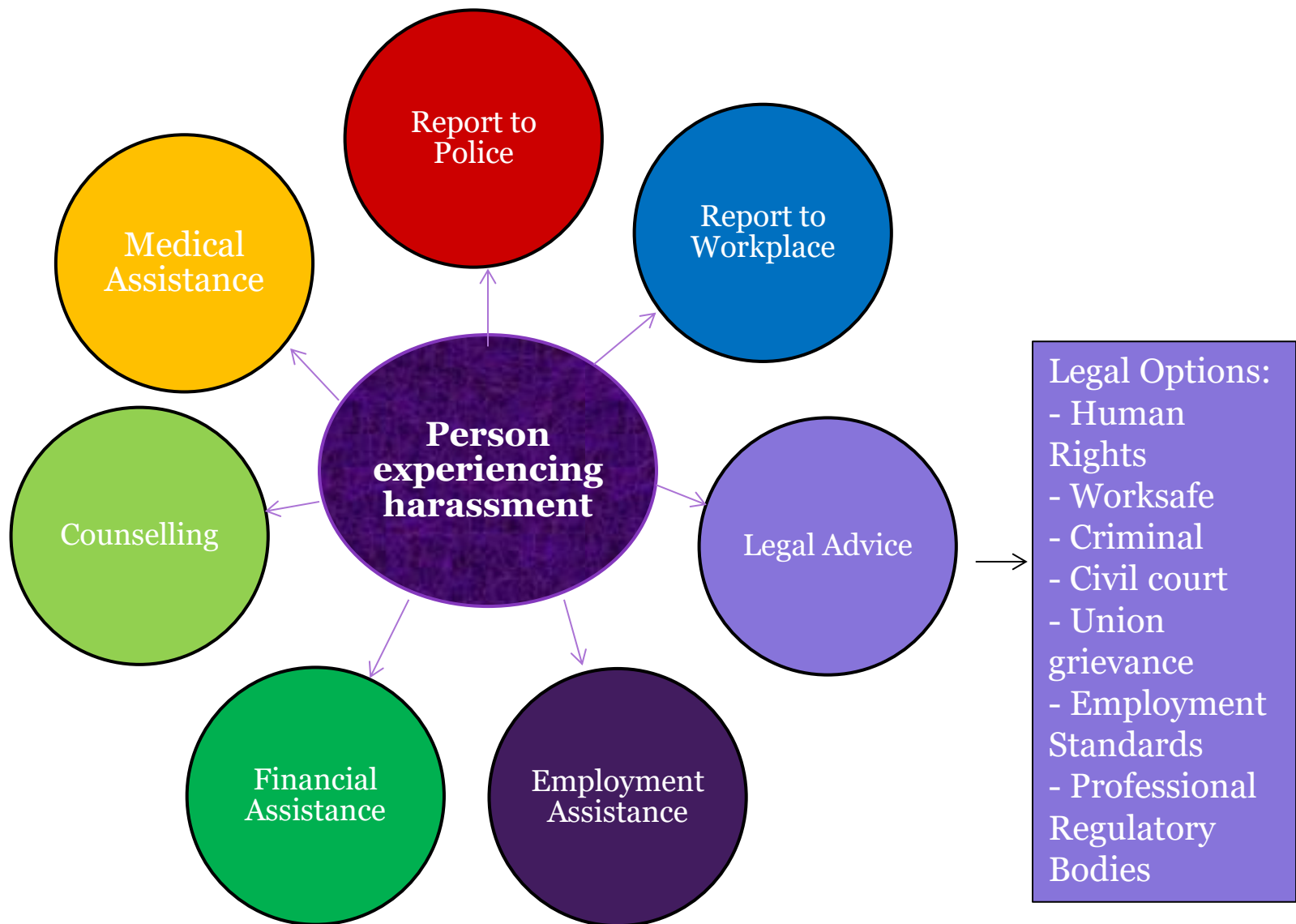
Ahmed finally talks his supervisor about Bob’s conduct but his supervisor tells him that, because Bob works for another company, there is nothing that can be done and he just has to deal with it. He tells Ahmed that working in construction can be like tough and he needs to have a thick skin. After this, Ahmed begins missing work frequently. Eventually, his employer informs him that he need not come back to work and that he is fired for absenteeism.



# Case studies debrief:

1. Is this workplace sexual harassment? Why or why not?
2. What advice would you give the client?
3. What other information do you need?

# Referral Needs for Workplace Sexual Harassment

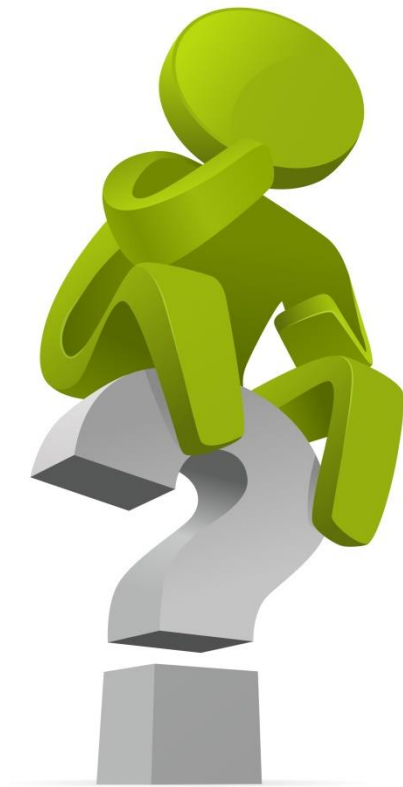


# Referral network?



- Is this a service your clients may need?
- Can we learn more about your services and clients to explore referrals?
- How can we work collaboratively together to support you and your clients?
- Would you be interested in learning more about SHARP Workplaces / Respect at Work Legal Clinic and workplace sexual harassment?

# Questions or Comments?



- Using typed chat or on video (unmute your microphone), we invite your responses!

# Sharp Workplaces Contact Information

Angela Leung, Intake Coordinator

Legal advice: 604-673-3143 or 1-888-685-6222  
SHARPWorkplaces@clasbc.net

<https://clasbc.net/get-legal-help/sexual-harassment-in-the-workplace/>

Education and training: 604-682-8820  
education@endingviolence.org



# Respect at Work Legal Clinic Contact Information

Rubia Pivetta, Legal Assistant

To book an appointment for a client: 604-669-4482

To contact us for support/collaboration:

Jeanne Robert (Legal Advocate): [Jeanne@mwcbc.ca](mailto:Jeanne@mwcbc.ca)

Tanya Thakur (Staff Lawyer): [Tanya@mwcbc.ca](mailto:Tanya@mwcbc.ca)

Juliana Dalley (Staff Lawyer): [Juliana@mwcbc.ca](mailto:Juliana@mwcbc.ca)

Education and training: [jeanne@mwcbc.ca](mailto:jeanne@mwcbc.ca)



# Presenter Contact Information

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Juliana Dalley

Migrant Workers Centre

Phone: 604-669-4482

Email: [Juliana@mwcabc.ca](mailto:Juliana@mwcabc.ca)



# Further Resources

## ***Sexual Harassment (general):***

**Dial-a-Law Sexual Harassment Overview:** <https://dialalaw.peopleslawschool.ca/sexual-harassment/>

## ***Human Rights:***

**The British Columbia Human Rights Tribunal** (the same one that deals with complaints) publishes guides, decisions, and other information on its website: <http://www.bchrt.bc.ca/>

**The CLAS Human Rights Clinic** published guides and information about human rights law and the process of filing a complaint on its website: <https://bchrc.net/legal-information/>

**“Expanding our Vision: Cultural Equality and Indigenous Peoples’ Human Rights”** report available online: <http://www.bchrt.bc.ca/shareddocs/indigenous/expanding-our-vision.pdf>

**Human Rights in British Columbia Fact Sheets** various fact sheets available online (in multiple languages): <https://www2.gov.bc.ca/gov/content/justice/human-rights/human-rights-protection/english>

## ***Employment Standards:***

**BC Government: Guide to the BC Employment Standards Act and Regulations:**

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/igm>

## ***Workers’ Compensation:***

Workers’ Advisors Office Workers Compensation Factsheets: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/personal-injury-and-workplace-safety/factsheets>





# Thank-You!

Please complete the feedback survey:

<https://sharpworkplaces.typeform.com/to/BvxGUVuj>





# You have the right to a harassment-free workplace.

Be informed.

Talk to a lawyer for free, confidential legal advice  
about sexual harassment in the workplace.

**SHARP**  
WORKPLACES

Sexual Harassment Advice,  
Response and Prevention  
for Workplaces

**604-673-3143**

**1-888-685-6222 (Toll-free in BC)**

**E-mail: [SHARPWorkplaces@clasbc.net](mailto:SHARPWorkplaces@clasbc.net)**

SHARP Workplaces provides legal advice, education and information  
to address workplace sexual harassment in British Columbia.

Funded by



Department of Justice  
Canada

Ministère de la Justice  
Canada



Community Legal  
Assistance Society

**ENDING VIOLENCE**  
Association of BC

## Education and Training:

We also offer free education and training on preventing and addressing sexual harassment in the workplace to:

- Non-profits,
- Indigenous organizations, and
- Small businesses



## How to contact us?

### For Legal Advice



Telephone: 604-673-3143  
Toll-free: 1-888-685-6222  
E-mail: SHARPWorkplaces@clasbc.net

For referrals to support services after 5 p.m. VictimLinkBC 1-800-563-0808

### For Education and Training

**ENDING VIOLENCE**  
Association of BC

Telephone: 604-682-8820  
E-mail: education@endingviolence.org



@clasbc



/clasbc

[www.clasbc.net/](http://www.clasbc.net/)  
[www.endingviolence.org/](http://www.endingviolence.org/)

#### Funded by



Department of Justice  
Canada

Ministère de la Justice  
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Community Legal  
Assistance Society



**Sexual Harassment  
Advice, Response  
and Prevention  
for Workplaces**

**SHARP  
WORKPLACES**

**You have the right  
to a harassment-free  
workplace.**

**Be informed.**

Contact us for free, confidential  
legal advice about sexual harassment  
in the workplace.





## What is SHARP Workplaces?

Community Legal Assistance Society (CLAS) and Ending Violence Association of BC (EVA BC) have partnered to provide legal advice, education and information to address workplace sexual harassment in British Columbia.

## Who are we?

CLAS is a non-profit organization providing legal assistance to British Columbians.

EVA BC is a provincial association providing training and support to anti-violence programs.

## What is workplace sexual harassment?

Workplace sexual harassment is unwelcome sexual behaviour that you experience at work or has a connection with your work.

## Examples of sexual harassment include:

Unwanted touching, patting, or hugging

Sexual staring, gestures, teasing, or jokes

Showing sexual or suggestive materials or comments, including sexting

Repeated unwanted invitations or attention from someone at work

Feeling you must accept sexual behavior to get hired, keep your job or get a promotion

Disrespectful comments about someone's gender presentation

Sexual assault



## Get legal advice:

If you have experienced sexual harassment at work, you can receive up to **five hours of free, confidential legal advice** from a lawyer.

## We provide:

- Advice on how to address sexual harassment in your workplace
- Information on your legal options
- Help with reviewing or drafting documents
- Coaching to guide you through a complaint or legal process
- Referrals to services for additional support, such as counselling, employment services, and peer support

## What we don't do:

- Lawyers with SHARP Workplaces cannot go to court or tribunals for you

## Helping Clients with a Workplace Sexual Harassment Session

### Case Studies for Discussion

#### Case study 1: Janice

- Janice is a 42-year-old Indigenous woman who works as a retail clerk at the Vernon branch of Smallmart. She says her supervisor is too strict on breaks and makes rude remarks to the women on her team, saying things like “sorry girls, I don’t mean to cut down on your chat and makeup time.” She says people feel uncomfortable with this supervisor, and she left her job.
- Janice says she is worried about paying her rent as there aren’t many jobs in Vernon but she couldn’t stay at work as she was not sleeping well and feeling anxious. She applied for Employment Insurance but was turned down because she quit.

#### Case study 2: Maria

- Maria, who has recently come to Canada, works as a live-in nanny and cleaner. She identifies as lesbian. The husband in the home where Maria works often makes comments about her appearance and tells her she should dress more “feminine”. He even offers to set her up with a male relative of his so that she can immigrate to Canada. Maria laughs it off and says she is not interested but these comments make her uncomfortable and upset.
- Maria also occasionally cleans the house of the husband’s father, George. George greets Maria and says good-bye with hugs. Maria says George is lonely. Lately, the hugs have become longer and it felt like a few times he brushed her buttocks and breasts when releasing from the hugs. She isn’t sure, it might have been accidental.
- Maria mentioned this to the employment agency that arranged her job, but they told her that if she complained or quit, she would have to leave Canada. Maria does not want to say anything because she does not want to lose her job or have to leave Canada, especially since there have been recent reports of violent attacks on LGBTQ people in her home country.

### **Case study 3: Kennedy**

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- Ahmed finally talks his supervisor about Bob's conduct but his supervisor tells him that, because Bob works for another company, there is nothing that can be done and he just has to deal with it. He tells Ahmed that working in construction can be like tough and he needs to have a thick skin. After this, Ahmed begins missing work frequently. Eventually, his employer informs him that he need not come back to work and that he is fired for absenteeism.