

Excerpts from SHARP Workplaces Reference Manual for Lawyers (*in draft*)

CHAPTER 24: MEETING WITH THE CLIENT

By Sara Forte

A. What You Need to Tell the Client: Expectations and Limitations

At the first client meeting, whether it is in person, by phone, or via video conference, make clear that your role is to help the client move forward with their legal issue. They need to know that you will provide them with confidential and non-judgmental legal advice. Discuss client and lawyer confidentiality and its limitations. (See also [check x-ref]section XX, Recognize Limits to Confidentiality.) It is crucial to discuss how you can help them while managing their expectations; be clear about the limitations of SHARP Workplaces advice, especially that we cannot help clients with litigation or represent them in court or tribunals. We are limited to providing five hours of advice and referrals to relevant services. In some circumstances it is possible to extend the time available by up to five hours, but this is not guaranteed. Make it clear to clients that they will be coached to help them do most tasks themselves. If you submit a request for more hours, SHARP Workplaces looks at a number of factors to assess the request. For example:

- The merits of the case.
- The complexity of the case.
- The stage of the case.
- The likelihood of the matter being resolved within the extended hours.
- The client's vulnerability and ability to continue the process without legal assistance.
- Service capacity (funding availability).
- Demand for services.
- Availability of alternative services (e.g., Human Rights Clinic).

If you are close to helping the client resolve their complaint, SHARP Workplaces will probably grant an extension, but this is not guaranteed. If an extension is not granted, or the client prefers, you have the option of working directly with the client under a new retainer, but you should not discuss this option until all the legal advice hours have been used up and you must be very clear with the client that the new arrangement is not connected to the SHARP Workplaces program.

SHARP Workplaces can only help people who have been sexually harassed in the context of their workplace. We do not have a mandate to assist people who have been sexually harassed outside of a work context. When you are assessing a client's claim, be aware of other issues that could be related to a workplace sexual harassment and address them if they are relevant—for example, the client has been discriminated

against under another characteristic protected under the *BC Human Rights Code*, such as race or disability. SHARP Workplaces legal advice services are available only to workers and employees, not to employers, although we may be able to provide referral information to employers and provide education and training on preventing and responding to sexual harassment in workplaces through our public legal education and information (PLEI) initiatives led by EVA BC. If a client needs counselling or a new job, for example, because of the workplace sexual harassment, SHARP Workplaces can help them with referrals to the appropriate support services, as this falls under our trauma-informed approach to holistic client services. We can also make legal referrals where there may be other legal issues beyond the workplace sexual harassment—for example, tenancy issue referrals to TRAC, family law issues to Rise Women’s Legal Centre, or for assistance with completing forms, Amicus Curiae or advocates. SHARP Workplaces staff will help lawyers identify appropriate referrals if necessary.

As noted above, a client can only receive one retainer with one SHARP Workplaces lawyer, although they may be reassigned to another lawyer in extenuating circumstances (e.g., the first lawyer has to withdraw for health reasons). If a client experiences another situation of sexual harassment that is unconnected with the original case, they can apply to SHARP Workplaces for further assistance. SHARP Workplaces will assess whether it is in the best interests of the client to refer the new case to the lawyer who assisted them with their first case or assign them a different lawyer.

Make clear to clients the limitations of the SHARP Workplaces advice services at the outset of the retainer and recognize the reality that clients may be self-representing at some point. Tailor meetings and discussions with the client to make best use of the time and empower the client to move forward alone. If you use file time to complete tasks without the client’s involvement, they are likely to struggle to understand any progress made and how to self-represent going forward. If you cannot help the client to resolve their issue within the time available, consider making appropriate referrals—for example, to CLAS’s Human Rights Clinic, Workers’ Advisors Office, Access Pro Bono—at the end of the allotted time.

B. What the Client Needs to Tell You

One way to make best use of the advice hours is to gather as much information as possible from clients before the first meeting. People who have experienced workplace sexual harassment or sexual violence have widely varying abilities to organize and communicate information about the harassment they have experienced. Some clients will be able to independently produce concise, accurate, and relevant summaries and chronological documentation; others will not be able to do this or will feel overwhelmed by the mere prospect of doing so, and pushing them to prepare information in advance of a meeting may discourage them from coming.

While there is no one-size-fits-all answer, a quick initial telephone conversation can be beneficial to both you and the client. You, or your legal assistant, can begin building

rapport in the call and attempt to gauge the client's ability to communicate and organize their thoughts. Make it clear that the client only needs to provide the information needed for conflict checks at this early stage, but any additional information that they can produce easily would be helpful—even if you only have their name and full contact information and the names of potentially adverse parties (employer and harasser), you can still proceed with a first meeting. Review the information provided by the intake coordinator when the case is assigned to determine what further information you may need, or if you are simply connecting to schedule the first meeting and start building your relationship with the client.

C. Ideal Information to Gather Before a First Meeting: Who, What, When, Where, and Why

1. Who

Before you accept any retainer, you need to run a conflict check and open a file. The intake coordinator sends the information you need, including the client's name and identifying information as required by LSBC, the name of the harasser, and the client's employer/former employer.

The intake coordinator talks with the client about all the parties that may be involved, provides you with those names, and tries to broadly identify the names of other parties who may have been involved. Perform a conflict check on all the names provided for potentially adverse parties to minimize the risk of subjecting clients to an unexpected conflict as they go through their story with you or once you are into the process.

2. What, When, and Where

It can be useful to get a chronological written statement, including dates, locations, and witnesses, from clients before you meet. However, this is not mandatory, and it can be extremely difficult for some clients to produce a written account. If they already have a written statement that they created for some other purpose, they can use that. Otherwise, take a case-by-case approach to requesting one. When asking for a chronology, it is important to emphasize that it is only for your reference and that it can be very brief and in point form. In many cases, you will have to use the client's verbal account of events when you meet as the basis of your information.

It is also helpful to request in advance any related documents, including emails and texts, and any employment agreement or workplace policies the client has access to. If they would need to request these from their employer/former employer, wait until you have set the first meeting before requesting them. If the client is no longer with their employer, request related documents such as resignation or termination letters and their Record of Employment. Gather details about the client's employment including their start date, total annual compensation (a T4 or December 31 pay stub are ideal), and nature of their position. Also ask about their current employment status and their age so you can assess the notice period under the *Bardal* factors. (See [check x-ref]section 6, Civil Actions (Employment Law and Tort), in chapter 8.)

If the client provides numerous documents, consider carefully which ones you need to review at the beginning of the process, and which ones can be set aside until you and the client have agreed on a plan. For example, if the client has provided copies of texts sent by the harasser, you may not need to review the details in the texts if the client is able to initially draft their complaint themselves; or if they have provided all their documentation from their WorkSafe claim and, after a review of their legal options, they decide to pursue a human rights complaint, you may need to review only certain documents included in the WorkSafe documentation.

The “when” is particularly important to identify early as many of the legal frameworks have limitation periods and filing deadlines. ([check x-ref]Table XX sets out limitation periods for various legal options.

3. Why

Ask the client why they decided to get legal advice. Ask for a list of their main questions so that you can ensure they are answered. Ask the client what they are hoping for from the meeting; this may help you focus the direction of the interview. This also contributes to the client being heard and ensuring you are able to address their expectations.

D. The Stage of the Client’s Complaint

Before the first meeting, ask the client what, if anything, they have done to address their concerns so far. Contacting you may be their first step, but ask if they have:

- started any legal proceedings (e.g., WorkSafeBC, Human Rights, Civil Action),
- reported the incident or incidents to the police,
- pursued an internal complaint with their employer, or
- reported the incident or incidents formally or informally at work.

If the client has taken any of these steps and has any written correspondence, statements, documents, or outcomes relating to these proceedings, request copies of them.

E. Client Interview Guidelines

1. Review the Client’s Intake Information Before Your Meeting

Review and assess the information provided by the client before you meet. If you are familiar with the client’s case, it can help you build rapport—and subsequently trust—at your first meeting. Key information to review and assess includes:

- the timeline of events, keeping limitation periods in mind,
- employment details, including the *Bardal* factors to assess reasonable notice period (age, length of service, nature of job, and availability of alternative employment) and compare reasonable notice cases, and
- the client’s current employment status (i.e., are they still at work, on leave, quit, fired, or in a new job?).

2. Make the Client Comfortable

At the beginning of the first meeting, review the agenda with the client so they know what to expect. For many, this will be their first interaction with a lawyer, or they may have had prior negative experiences with lawyers or the justice system. Find a private location to meet and have a pen, notepad, calculator, and tissues available for the client.

Introduce yourself and your experience, and explain the solicitor-client relationship and confidentiality. Clients who are experiencing sexual harassment at work are often concerned about their privacy and that something may happen just because they are consulting with a lawyer.

Here is an example of how you might introduce yourself and try to put a client at ease:

How are you feeling about this meeting? Is there anything I can do to make it easier for you?

I run all of my meetings the same way, and I will explain that to you now so you know what to expect.

First, I would like to hear what has happened. As we go through it, I may ask you questions to get more information, and if I think you are getting off track or I don't understand the relevance of information, I may interrupt so we can stay focused.

Next, I will explain the law to you and how it applies to your situation. You can ask questions then or anytime that feels right to you.

Then we will review your options, and the pros and cons of each option, together.

And then we will pick a path and make a strategy together. You will leave here with a plan, or at the very least, a couple of options to consider.

As we have limited hours, we should consider how I can provide the most value to you. We can discuss at the end of the meeting how you want me to spend my time.

Do you have any concerns or worries about the meeting or the plan? [Address them] We can take a break at any time.

After this introduction you may feel able to ask the client what their ideal outcome looks like. What is their goal? Do they want to stay at work with the harassment stopped? Do they want to leave their job with some compensation? Some clients cannot address this at the outset of the meeting, but for many it is a good place to begin and can help to frame the rest of the meeting and strategy. If you do not address this point at the outset, circle back to it later in the meeting.

3. Listen to the Client

If the client has a certain point in their story where they would like to start, let them begin with that. Depending on where they start and the flow of the narrative, you may want to bring them back to the beginning at an appropriate point. The relevant starting point in most cases is when they started their employment. It can be useful to refer to any documents that they provided in advance or brought with them as you discuss the related events.

Some clients need direction and assistance, with reminders of where they left off. If a client is struggling to give a chronological account of events, make a note of your questions, let them finish their thought or story, and then circle back for more detail.

4. Ask About the Client's Story

You will need certain key information to assess a client's case. Ask them about:

- their working relationship or interactions with the harasser;
- the relative positions between them and the harasser in the organization (e.g, power imbalances);
- details of the workplace sexual harassment/sexual violence (what, where, when);
- witnesses or people told contemporaneously about the incident;
- the impact the harassment had on them; specifically, did they:
 - see a doctor or other healthcare provider;
 - take any time off work;
 - suffer symptoms of any kind;
 - find the situation at work or their performance at work was negatively affected;
 - experience discomfort;
 - find themselves treated differently, demoted, or sidelined; or
 - get fired?

If you did not address the client's ideal outcome or goal at the outset, do so now.

5. Explain the Law and Legal Assessment

You have to give the client some legal coaching. This is when the notepad and pen you brought for the client come into use. Most lawyers find a plain language approach to writing and speaking is challenging but it is crucial for legal coaching. Invite questions from the client throughout and check in frequently to confirm they understand what you are saying. Review the three-part test from *Janzen v. Platy* and explain each segment of the test. Confirm that the client understands the test and work with them to apply it to their situation. Review the various legal schemes that can apply to their case, and work through them to assess each one for fit, and the legal tests that apply under each. Use your discretion about schemes that seem obviously not applicable. It may be useful to mention them briefly rather than reviewing them in detail.

The Three-Part Test for Sexual Harassment

Janzen v. Platy [1989] 1 SCR 1252 sets out a three-part test for sexual harassment. In essence, the conduct must:

1. be of a sexual nature,
2. be unwelcome, and
3. result in adverse consequences for the complainant.

A good approach to talking about the law can be to explain the legal concept in abstract terms first and then apply it to your client's situation. The client may find it easier to understand if you contrast their case with a hypothetical one that has a different legal assessment.

Make a practical assessment of what financial and other outcomes there could be under the various legal frameworks, and then review some negotiated settlements and what a reasonable settlement might include (look at both financial and other outcomes). Use your calculator to walk through the calculation of damages with your client.

6. Discuss the Legal Options

Based on the legal assessment, some legal frameworks will apply better than others. It is impossible to create a complete catalogue of options, as every client's situation has both unique facts and unpredictable aspects. Collaborate with the client to compile the most complete list of options that you can come up with and then review them. Seek their ideas and input, and expressly acknowledge that they, not you, are the expert on their situation. Explain that the options are not mutually exclusive and that the client can pursue several either in parallel or in series. As you review each option, discuss the pros and cons in the context of the client's goal or ideal outcome.

The options include:

- Do nothing. This is always an option. Discuss the pros and cons of doing nothing.
- Raise the matter informally internally at work.
- Make a formal internal complaint.
- Send an email written by the client which may be reviewed, or ghost-written by counsel, about the matter, asking that it be addressed internally.
- Send a demand letter about the matter from counsel, asking that it be addressed internally.
- Start legal action(s).
- Send an email written by the client and reviewed, or ghost-written by counsel, about the matter, seeking severance package.
- Send a demand letter about the matter from counsel, demanding severance package.

When a client is weighing their options, remind them about the limited funding for legal services offered under SHARP. Many clients want “a letter from a lawyer.” While you may be able to have the consultation meeting, review the materials, and write a demand within the five-hour limit, it is very unlikely that any negotiation would conclude within those five hours. Even with a five-hour extension, a demand letter and negotiation on your letterhead could easily use all of the 10 hours, leaving no time to help the client through any legal processes. A ghost-written email (or email the client writes and you review) is a better use of time. It should be written in a simplified, plain language form, rather than as a formal demand letter, and should appear as if the client had written it. If you can provide the client with an understanding of the range of reasonable resolution outcomes, they may be able to review the employer’s response and respond without further legal advice.

See [check x-ref]chapter 10, Legal Coaching: Guiding Self-Represented Litigants to Advance Their Case, for an example of a ghost-written demand.

7. Make a Plan and Fix an End Goal of Service

In most client consultations, a clear best option—or perhaps a top two or three—will emerge. Ideally, by the end of the first meeting with the client you will have a step-by-step plan. Discuss with the client how to make best use of the time available, what the client can do themselves, and where they anticipate needing assistance. For example, a client may be able to draft the complaint or demand letter themselves and ask you to review it, assist with calculating claims, or provide relevant case law to support their claim. They may be able to attend mediation with a support person and could benefit from understanding the process and the value of their claim, receiving tips about negotiation, and having assistance in reviewing the release. Depending on the client, you may be able to work with them during the meeting to ensure they have notes on the options, time limits, and overall plan. If they are unable to make notes, send a brief follow-up email summarizing the plan for them and listing links to self-help information online and forms for starting legal actions, information about limitation periods and filing deadlines, and clear statements about what each of you will each be responsible for doing.

Tips for Interviewing Clients

- If your client is unable to stop talking, or speaks very rapidly, they may need to be gently interrupted from time to time and reminded to slow down so you can take notes.
- If your client responds very slowly to questions, or appears to not respond, you may need to pause without commenting to allow them time to gather their thoughts.
- If your client gets stuck on a topic and is unable to move forward from something unrelated to the matter at hand, remind them there is only a certain amount of time available. Let them know you are there to help with the one

issue you are there to address, refocus the conversation by asking them to respond to a few specific questions.

- If your client struggles to communicate a detailed narrative, you may need to ask specific questions to prod for more information. It may be helpful to ask them if there is someone who you can call to get more details or to corroborate their information.
- If your client gets agitated, angry or upset, it may help to take a brief break (time and situation permitting).
- See also [check-ref]chapter XX, Trauma-Informed Practice.

CHAPTER 27: ADVISING CLIENTS ON THEIR LEGAL OPTIONS: SUMMARY TABLES: STATUTE JURISDICTION, ISSUE FORUMS, REMEDIES, AND TIME LIMITS

By Jadine Lannon

The tables below summarize the various potential legal options for clients with workplace sexual harassment complaints. Use them as a quick reference to ensure you have reviewed all the client's available options and to advise them on the most suitable option(s) for their situation.

- Table 1 lists the forums, outlines jurisdiction and issues dealt with, remedies, and time limits.
- Table 2 outlines the pros and cons of each option, including indicating parallel forums, level of control a client may have, whether the decision-making body is proactive in resolving cases, and general time frames for achieving a resolution through the forum.
- Table 3 summarizes the pros and cons for each forum.

Table 1. AVAILABLE FORUMS

Forum	Relevant statute(s) (non-exhaustive)	Jurisdiction (applies to)	Issues	Available remedies (non-exhaustive)	Time limits
BC Human Rights Tribunal	<i>Human Rights Code</i> , RSBC 1996, c. 210	Provincially regulated employers, workers, and services, both unionized and non-unionized	<ul style="list-style-type: none"> -Human rights violations -Protection against retaliation for participating in human rights process 	<ul style="list-style-type: none"> -Damages for injury to dignity -Compensation for wage loss and expenses -Ameliorative orders (e.g., reinstatement) -Systemic remedies (workplace training, creation of workplace policies, etc.) 	1 year from the date of the last discriminatory act
PROVINCIAL FORUMS	<ul style="list-style-type: none"> -<i>Workers Compensation Act</i>, RSBC 2019, c. 1 (“WCA”) -<i>Occupational Health and Safety Regulation</i>, B.C. Reg. 296/97 	Workers in provincially and federally regulated workplaces, both unionized and non-unionized	<ul style="list-style-type: none"> -Workplace harassment and bullying -Injuries related to employment, including mental health injuries if there is a <i>DSM</i> diagnosis -Discriminatory (retaliatory) action 	<p>Workplace harassment/bullying:</p> <ul style="list-style-type: none"> -investigation into whether employer has sufficient workplace bullying and harassment policies/procedures <p>Injury:</p> <ul style="list-style-type: none"> -Compensation for income lost as a result of injury -Healthcare services (treatment, rehabilitation, etc.) -Vocational retraining <p>Discriminatory action:</p> <ul style="list-style-type: none"> -Reinstatement 	<ul style="list-style-type: none"> -1 year from the date of injury or discriminatory action -60 days from failure to pay wages pursuant to Part III of the <i>WCA</i>

					-Removal of discipline -Reimbursement for expenses -Wage loss	
Internal workplace processes	N/A	Workplaces where the employer has an internal process for dealing with harassment, bullying, etc. Note: WorkSafeBC requires employers to have internal processes to deal with bullying/harassment complaints	Depends on workplace policies, guidelines, etc.	Depends on workplace policies, guidelines, etc.	Depends on workplace policies, guidelines, etc.	
BC Employment Standards Branch	<i>Employment Standards Act ("ESA"), RSBC 1996, c. 113</i>	Non-unionized workers in provincially regulated workplaces	Violations of employment standards	-Compensation for things that should have been paid pursuant to the <i>ESA</i> , but were not (e.g.: overtime, vacation pay, payment in lieu of notice on termination, etc.) -Enforcement of minimum standards provided for in the <i>ESA</i>	6 months from the date of contravention or termination	
Union grievances and labour arbitrations	- <i>Labour Relations Code</i> , RSBC 1996, c. 244 - <i>Human Rights Code</i> , RSBC 1996, c. 210 - <i>Employment Standards Act</i> , RSBC 1996, c. 113	Unionized workers in provincially regulated workplaces	-Violations of collective agreements -Human rights violations -Violations of employment standards	-Wage loss -Reinstatement, or damages in lieu of reinstatement -Human rights damages (e.g., damages for injury to dignity) -Privacy damages -Compensation for breaches and	Depends on the collective agreement	

				-Privacy violations	enforcement of the <i>ESA</i>	
*Civil suit: Civil Resolution Tribunal	<p>-<i>Civil Resolution Tribunal Act</i>, SBC 2012, c. 25</p> <p>-<i>Small Claims Act</i>, RSBC 1996, c. 430</p> <p>-<i>Privacy Act</i>, RSBC 1996, c. 373</p>	<p>For non-unionized workers with employment and tort law claims of \$5,000 or less</p> <p>Note: if personal injury arose out of and in the course of employment, the worker may be barred pursuant to s. 10 of the <i>WCA</i> from pursuing civil suit for personal injury and can only pursue a WorkSafeBC claim. Depending on the identity of the perpetrator and nature of conduct that caused the injury, the worker may be allowed to pursue either a WorkSafeBC or civil claim</p>	<p>-Wrongful and constructive dismissal</p> <p>-Personal injury</p>	<p>Employment law remedies:</p> <p>-Contractual damages (compensation for things that should have been paid pursuant to the employment contract, but were not)</p> <p>-Payment in lieu of reasonable notice</p> <p>-Aggravated damages for manner of dismissal</p> <p>-punitive damages</p> <p>Personal injury remedies:</p> <p>-Compensation for loss or injury caused by tortious conduct</p> <p>-Aggravated and punitive damages</p>	<p>2 years from the date the claim is discovered, except for claims relating to sexual assault (see s. 3(1)(j) of the <i>Limitations Act</i>, SB 2012, c. 13)</p>	
*Civil suit: Provincial Court – Small Claims	<p>-<i>Small Claims Act</i>, RSBC 1996, c. 430</p> <p>-<i>Provincial Court Act</i>, RSBC 1996, c 379</p> <p>-<i>Privacy Act</i>, RSBC 1996, c. 373</p>	<p>For non-unionized workers with employment and tort law claims of between \$5,001 and \$35,000</p> <p>(see note above re: WorkSafeBC potentially a bar to personal injury suits)</p>	<p>-Wrongful and constructive dismissal</p> <p>-Personal injury</p>	Same as above	Same as above	
*Civil suit: BC Supreme Court	- <i>Supreme Court Act</i> ,	For non-unionized workers with employment and tort	-Wrongful and constructive	Same as above	Same as above	

		RSBC 1996, c. 443 - <i>Privacy Act</i> , RSBC 1996, c. 373	law claims of more than \$35,000 (see note above re: WorkSafeBC potentially a bar to personal injury suits)	dismissal -Personal injury		
	Office of the Information and Privacy Commissioner of BC	- <i>Personal Information Protection Act</i> , SBC 2003, c. 63 - <i>Freedom of Information and Protection of Privacy Act</i> , RSBC 1996, c. 165	Applies to BC public bodies (governmental ministries, agencies, boards, etc.), and private organizations that are either located in BC or that collect, use, and disclose the personal information of individuals in BC	-Violations of privacy (excluding the tort of invasion of privacy) -Access to information requests	-Investigations into privacy violations -Declarations of privacy violations -Release of information via access to information requests	No time limits for privacy complaints or access to information requests provided for in <i>PIPA</i> or <i>FIPPA</i> , but privacy complaints could arguably be subject to the 2-year limitation period provided for in the <i>Limitation Act</i> , SBC 2012, c. 13
	Professional regulatory bodies (e.g., law societies, colleges, professional associations, etc.)	Depends on regulatory body	-Depends on regulatory body, but likely includes colleagues, clients, customers, and patients. -Many regulatory bodies also allow for complaints from the general public	Violations of professional standards and requirements	Depends on regulatory body, but could include investigations, public sanctions, removal of required certifications, restrictions/limits on practice, and fines	Depends on regulatory body
FEDERAL FORUMS	Canadian Human Rights Commission/Canadian Human Rights Tribunal	<i>Canadian Human Rights Act</i> , RSC 1985, c. H-6	Federally regulated employers, workers, and services, both unionized and non-unionized, except certain workers excluded under the <i>Federal Public</i>	-Human rights violations -protection against retaliation for filing or being involved in a	-Damages for pain and suffering, capped at \$20,000 -Special damages for intentional discrimination, capped at \$20,000 -Compensation for wage loss and	1 year from the date of the last discriminatory act

			<i>Sector Labour Relations Act</i> , SC 20003, c. 22, s. 2	complaint	expenses -Ameliorative remedies -Systemic remedies	
Employment and Social Development Canada (Labour Program)	<i>Canada Labour Code</i> , RSC 1985, c. L-2, Part III	Non-unionized workers in federally regulated workplaces		Violations of employment standards	-Compensation for breaches of the <i>Canada Labour Code</i> , Part III -enforcement of minimum standards set out in <i>Canada Labour Code</i> , Part III	-6 months from the date of contravention for most complaints -90 days for certain complaints (unjust dismissal, genetic testing, reprisal complaints)
Internal workplace processes	N/A	Workplaces where the employer has an internal process for dealing with harassment, bullying, etc. Note: WorkSafeBC requires employers to have internal processes to deal with bullying/harassment complaints		Depends on workplace policies, guidelines, etc.	Depends on workplace policies, guidelines, etc.	Depends on workplace policies, guidelines, etc.
Union grievances and labour arbitration	<i>Canada Labour Code</i> , RSC 1985, c. L-2, Part I	Unionized workers in federally regulated workplaces		-Violations of collective agreements -Human rights violations -Violations of employment standards	-Wage loss -Reinstatement, or damages in lieu of -Human rights damages (e.g. damages for pain and suffering and special damages) -Privacy damages	Depends on the collective agreement

				-Privacy violations	-Compensation for breaches and enforcement of <i>Canada Labour Code</i> , Part III	
*Criminal prosecution	<i>Criminal Code of Canada</i> , RSC 1985, c. C-46	All people in Canada		Criminal acts, including assault, sexual assault, uttering threats, mischief, and criminal harassment	<ul style="list-style-type: none"> -Pre-conviction restrictions on abuser (no contact orders, limitations on where they can go, detention, etc.) -Post-conviction penalties on abuser (fines, house arrest, jail, etc.) -Victim compensation -Publication bans -Testimonial accommodations (testifying behind a screen, via closed circuit TV, etc.) 	None, though singular minor incidents may not be charged if incident occurred more than 6 months in the past
Office of the Information and Privacy Commissioner of Canada	<ul style="list-style-type: none"> -<i>Privacy Act</i>, RSC 1985, c. P-21 -<i>Personal Information Protection and Electronic Documents Act</i>, SC 2000, c. 5 	Applies to the Government of Canada, and to private sector organizations (excluding those covered by BC's PIPA)		<ul style="list-style-type: none"> -Violations of privacy -Access to information requests 	<ul style="list-style-type: none"> -Investigations into privacy violations -Declarations of privacy violations -Release of personal information via access to information requests <p>Note: Requests for information that is not personal information must be made pursuant to the <i>Access to Information Act</i>, RSC 1985, c A-1</p>	No time limits for privacy complaints or access to information requests provided for in the <i>Privacy Act</i> or PIPEDA
Professional regulatory bodies (e.g., law societies, colleges,	Depends on regulatory body	-Depends on regulatory body, but likely includes colleagues, clients,		Violations of professional standards and	Depends on regulatory body, but could include investigations, public sanctions, removal of	Depends on regulatory body

	professional associations, etc.)		customers, and patients. -Many regulatory bodies also allow for complaints from the general public	requirements	required certifications, restrictions/limits on practice, and fines	
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*These forums may be available to workers from both provincially and federally regulated workplaces.

Table 2. PROS AND CONS OF AVAILABLE FORUMS

	Forum	Availability	Parallel forums	Remedies	Time limits	Level of control over process	Proactivity of forum	Public nature of forum	Time range for resolution
Human Rights Complaint	BC Human Rights Tribunal	-Workers in provincially regulated workplaces -Unionized and non-unionized	Grievances, WorkSafeBC proceedings, and internal workplace complaint processes may impact ability to proceed with Human Rights complaint	-Damages for injury to dignity (highest award \$75,000) -Compensation for wage loss and expenses -Ameliorative orders (e.g., reinstatement) -Systemic remedies -Remedies for retaliatory actions	1 year	High: complainant exercises almost complete control over direction of proceeding	Low: proceeding is dictated almost entirely by parties	-Public: most decisions and hearings are open to public, but privacy protections are available (anonymization, etc.) -Complaints are not public until the matter is placed on a hearing list 90 days before the hearing; settlements are private	1–3 years
	Canadian Human Rights Commission/ Canadian Human Rights Tribunal	-Workers in federally regulated workplaces -Unionized and non-unionized		-Damages for pain and suffering (capped at \$20,000) -Special damages for intentional discrimination (capped at \$20,000) -Ameliorative orders (e.g., reinstatement) -Systemic remedies -Remedies for retaliatory actions			Medium to low: Commission relatively proactive during screening, and can become a party once complaint is referred to Tribunal		3+ years

WCB	WorkSafeBC	<ul style="list-style-type: none"> -Workers in both provincially and federally regulated workplaces -Unionized and non-unionized 	<ul style="list-style-type: none"> -Civil actions for personal injury may be available in cases involving personal injuries caused by a third party (not a worker/employer, or a worker/employer engaging in “personal” conduct unrelated to work) 	<ul style="list-style-type: none"> -Ameliorating impact of discriminatory (retaliatory) action (reinstatement, removal of discipline, compensation for wage loss and expenses) -Compensation for income lost as a result of workplace injury -Healthcare services (treatment, rehabilitation) -Vocational retraining -Workplace investigations/inspections 	<ul style="list-style-type: none"> -1 year for injuries and discriminatory action complaints -60 days for discriminatory action complaint involving failure to pay wages pursuant to Part III of the WCA 	Medium to low: worker exercises some control over direction of proceeding	High: WorkSafe BC takes a proactive role in advancing claims and can initiate its own workplace investigations and take enforcement actions against employers	Private: files and proceedings are not open to the public, and workers’ identities are anonymized in written decisions	2 months–1 year
Employment Standards Complaint	BC Employment Standards Branch	<ul style="list-style-type: none"> -Workers in provincially regulated workplaces -Non-unionized 	<ul style="list-style-type: none"> -Civil suits may be able to deal with breaches of the <i>ESA</i>, if they are a matter of contract -Grievances can deal with breaches of the <i>ESA</i> 	<ul style="list-style-type: none"> -Compensation for breaches of the <i>ESA</i> -Enforcement of minimum standards set out in <i>ESA</i> 	6 months	Medium to high: workers exercise relatively high degree of control over proceeding	High: ESB takes a proactive role in advancing claims and can initiate its own workplace investigations and take enforcement actions against employers	Private at the first level (initial determination by a director), but appeals tribunal (BCEST) decisions are publicly available; privacy protections may be available (anonymization, etc.)	3 months–1 year

	Employment and Social Development Canada (Labour Program)	-Workers in federally regulated workplaces -Non-unionized	Grievances can deal with breaches of the <i>Canada Labour Code</i> , Part III	-Compensation for breaches of the <i>Canada Labour Code</i> , Part III -Enforcement of minimum standards set out in <i>Canada Labour Code</i> , Part III	6 months or 90 days, depending on claim type	Likely medium to high: workers likely exercise relatively high degree of control over proceeding	Likely high: ESDC likely takes a proactive role in advancing claims and can initiate its own workplace investigations and take enforcement actions against employers	Private at first level (decision by inspector), but decisions of appeals referee are publicly available.	3 months–1+ years
Workplace Complaint	Internal workplace processes	-Workers in workplaces where internal processes exist -Unionized or non-unionized	Depends on internal process	Depends on internal process	Depends on internal process	Usually low, but depends on internal process	Usually low, but depends on internal process	Private: proceedings and resolution usually not accessible to the public	Depends on internal process

Grievance	Union grievances and labour arbitrations	-Unionized workers	Human rights complaints and privacy complaints may impact ability to proceed with grievance on the same issue(s)	-Wage loss -Reinstatement, or damages in lieu of -Human rights damages (e.g. damages for injury to dignity/pain and suffering) -Privacy damages -Compensation for breaches and enforcement of employment standards legislation	Depends on collective agreement	Low: union has carriage of grievance and controls direction of proceeding	Medium to high: unions will frequently attempt to enforce workers' rights without much pressure from workers	Depends on stage of proceeding: resolutions before arbitration are usually private, but arbitration awards are usually publicly available; privacy protections may be available (anonymization, etc.)	3 months–2+ years
		-Non-unionized workers	-Availability of grievances for unionized workers prevents employment law claims and likely most tort claims -Availability of WorkSafeBC claims bars most personal injury claims where injury related to work/workplace	Employment law remedies (contractual damages, notice, etc.) and tort law remedies (damages) up to \$5,000	2 years, except for claims relating to sexual assault (see s. 3(1)(j) of the <i>Limitations Act</i> , SB 2012, c. 13)	High: parties exercise high degree of control over direction of proceeding	Low: proceeding is dictated entirely by parties	Relatively public: decisions publicly available; privacy protections may be available (anonymization, etc.)	3 months–1 year
Civil Suit	Provincial Court – Small Claims		-Participation in civil proceedings while criminal	Employment and tort law remedies from \$5,001 to \$35,000				Public: hearings and decisions publicly accessible; privacy protections	6 months–2 years

	BC Supreme Court		proceedings ongoing could harm credibility of complainant in criminal proceeding	Employment and tort law remedies above \$35,000				may be available (anonymization, etc.)	1–4 years
Privacy Complaint and/or Access to Information Requests	Office of the Information and Privacy Commissioner of BC	-Can be brought by any worker, whether unionized or non-unionized -Whether federal or provincial depends on organization against which complaint/access request is brought	Grievances alleging privacy violations may impact ability to proceed with privacy complaints	-Investigations into privacy violations -Declarations of privacy violations -Release of information via access to information requests Note: federally, requests for information that is not personal information must be made pursuant to the <i>Access to Information Act</i> , RSC 1985, c. A-1	None	Medium: complainant exercises some control over direction of privacy complaints and access to information requests	Medium to high: OIPC can initiate its own privacy complaints, but has limited enforcement mechanisms	Private: some decisions publicly available but claimants are anonymized	3 months–1 year
	Office of the Information and Privacy Commissioner of Canada			-Investigations into privacy violations -Declarations of privacy violations -Release of personal information via access to information requests Note: requests for					6 months – 1+ years

				information that is not personal information must be made pursuant to the <i>Access to Information Act</i> , RSC 1985, c. A-1					
Criminal Charges	Criminal prosecution	Can be instigated by anyone, whether unionized or non-unionized	N/A, but complainant's participation in civil proceedings while criminal prosecution ongoing could harm credibility of complainant in the criminal process	-Pre- and post-conviction penalties and restrictions on abuser (detention, movement restrictions, no contact orders, fines, etc.) -Victim compensation -Publication ban -Testimonial aids (testifying behind a screen, via closed circuit television, etc.)	None, but singular minor incidents may not be charged if incident occurred more than 6 months ago	Low: complainant exercises very little to no control over process	High: once criminal charges are initiated, Crown directs and controls prosecution	Public: hearings and decisions are publicly accessible; privacy protections may be available (anonymization, etc.)	2-5+ years
Complaint to Regulatory Body	Professional regulatory bodies (e.g., law societies, colleges, professional associations, etc.)	-Depends on regulatory body, but likely includes colleagues, clients, customers, and patients. -Many regulatory bodies also allow for complaints from the general public	Depends on regulatory body, but usually there are no parallel forums	Depends on regulatory body, but could include investigations, public sanctions, removal of required certifications, restrictions/limits on practice, and fines	Depends on regulatory body	Probably low: complainants likely exercise little control over process	Probably high: regulatory body likely to be proactive in advancing and investigating complaints	Probably mostly private: published decisions likely available to public, but complainants likely anonymized	Depends on regulatory body

Table 3: SUMMARY OF PROS & CONS

Forum	PROS	CONS
BC Human Rights Tribunal	<ul style="list-style-type: none"> -Complainant exercises a high degree of control over process -Monetary awards can be large, and there is a trend towards higher I2D damages -Timeline for resolution in the mid-range (1-3 years) -Privacy protections may be available for public hearings/awards 	<ul style="list-style-type: none"> -1-year time limit -Forum relatively public -Tribunal is not proactive and its processes are becoming increasingly complex, meaning complaints are becoming difficult to navigate without a lawyer -Trend towards increased timelines for resolutions -Complaints may be barred or impacted by grievances and WorkSafeBC proceedings
Canadian Human Rights Commission/Canadian Human Rights Tribunal	<ul style="list-style-type: none"> -Complainant exercises high degree of control over process -Commission is relatively active during screening process, making the process relatively accessible to unrepresented litigants -Once complaint is referred to Tribunal, Commission can take a proactive role as party (usually to pursue systemic remedies) -Privacy protections may be available for public hearings/awards 	<ul style="list-style-type: none"> -1-year time limit -Forum relatively public -Time line for resolution is very long (2+ years) -Human rights damages capped at \$40,000 in total (\$20K for pain and suffering, \$20K for special damages) -Complaints may be barred or impacted by grievances and WorkSafeBC proceedings

WCB	WorkSafeBC	<ul style="list-style-type: none"> -WorkSafeBC takes a proactive role in advancing complaints, meaning process is accessible to unrepresented litigants -Time line for resolution relatively quick (potentially a few months) -Many supportive services available, such as treatment, rehabilitation, and vocational retraining -Proceedings and outcomes private/anonymized 	<ul style="list-style-type: none"> -1-year time limit for claims and most discriminatory action complaints -60-day time limit for discriminatory action complaints involving failure to pay wages required under Part III of the <i>WCA</i> -Workplace investigations not focused on investigating bullying/harassment but on making sure employer has sufficient policies and procedures in place to deal with bullying/harassment -Worker's level of control over process is not high: WorkSafeBC largely dictates how claims will proceed and what supportive services will be made available to workers -Findings in WorkSafeBC matters may impact human rights complaints -Mental health injuries require <i>DSM</i> diagnosis -WorkSafeBC regime bars most personal injury suits, even if compensatory benefits not available
Employment Standards Complaint	BC Employment Standards Branch	<ul style="list-style-type: none"> -Workers exercise a relatively high degree of control over process -ESB takes a relatively proactive role in advancing complaints, meaning process is accessible to unrepresented litigants -Time line for resolution relatively fast (potentially a few 	<ul style="list-style-type: none"> -6-month time limit -Remedies limited to resolving breaches of employment standards minimums: common law employment remedies must be pursued through civil claims -Unionized workers have to pursue breaches of <i>ESA</i> through the grievance process

		months) -Initial proceedings and decision are private; privacy protections available for appeals decisions	
	Employment and Social Development Canada (Labour Program)	-Workers likely exercise a relatively high degree of control over process -ESDC likely takes a relatively proactive role in advancing complaints, meaning process is likely accessible to unrepresented litigants -Time line for resolution relatively short (potentially a few months) -Initial proceedings and decisions are private	-6-month time limit for most claims -90-day time limit for some claims -Remedies limited to resolving breaches of employment standards minimums: common law employment remedies must be pursued through civil claims -Unionized workers have to pursue breaches of <i>CLC</i> through the grievance process -Unclear if privacy protections available for appeals decisions
Workplace Complaint	Internal workplace processes	-Can be effective at resolving workplace issues, so can be a good option for individuals who want to continue working for the employer -Time line for resolution is usually short -Proceedings and resolution are private	-Efficacy depends heavily on employer's internal processes and attitudes -Workers tend to exercise a low degree of control over process -Employers do not usually investigate their own liability -Employees could face discipline if they fail to participate in a workplace investigation

Grievance	Union grievances and labour arbitrations	<ul style="list-style-type: none"> -Union has carriage of grievance, meaning need for grievor intervention is low -Unions often take proactive role in resolving issues even where no grievance is filed -Legal expenses covered by the union -Can deal with a number of different violations (human rights violations, breaches of employment standards, privacy breaches) -Time line for resolution can be short (potentially a few months) -Pre-arbitration processes and outcomes usually private -Privacy protections may be available for published awards 	<ul style="list-style-type: none"> -Decision to advance grievance rests entirely with union, so worker exercises little to no control over grievance process -Working in a unionized context limits availability of other remedial avenues, such as civil claims and employment standards claims -Outcomes in grievance procedures can impact on availability to pursue human rights claims -Arbitration awards publicly available
	Civil Suit	Civil Resolution Tribunal	<ul style="list-style-type: none"> -Time line for resolution can be short (3 months–1 year) -Accessible to unrepresented litigants -Time limit relatively long (2 years), with potentially no time limit for claims relating to sexual assault -No cost implications if suit is unsuccessful -Privacy protections may be available for published decisions
Provincial Court – Small Claims		<ul style="list-style-type: none"> -Plaintiff exercises high degree of control over direction of proceeding -Time line for resolution in the mid-range (6 months–2 	<ul style="list-style-type: none"> -Damages limited to \$35,000 -If represented by counsel, legal fees can be expensive

		<p>years)</p> <ul style="list-style-type: none"> -Relatively accessible to unrepresented litigants -Time limit relatively long (2 years), with potentially no time limit for claims relating to sexual assault -No cost implications if suit is unsuccessful -Privacy protections may be available for public hearings/decisions 	<ul style="list-style-type: none"> -Hearings and decisions open to public
	BC Supreme Court	<ul style="list-style-type: none"> -No limit on damages -Plaintiff exercises high degree of control over direction of proceeding -Time limit relatively long (2 years), with potentially no time limit for claims relating to sexual assault - Privacy protections may be available for public hearings/decisions 	<ul style="list-style-type: none"> -Usually not accessible for unrepresented litigants, meaning legal cost of advancing a suit can be significant -Time line for resolution is long (1–4 years) -Cost implications if a civil suit is unsuccessful -Hearings and decisions open to public
Privacy Complaint & Access to Information Requests	Office of the Information and Privacy Commissioner of BC	<ul style="list-style-type: none"> -Time line for resolution relatively short (potentially a few months) -No time limits for complaints or access to information requests -Accessible to unrepresented litigants -Proceedings and outcomes are private 	<ul style="list-style-type: none"> -Cannot deal with tort of invasion of privacy: that needs to be pursued through grievance or civil suit -Privacy complaints have limited remedies: OIPC cannot award damages, and its enforcement mechanisms are relatively toothless -Grievances can impact ability to proceed with a privacy complaint -If requesting personal information about someone other than requester, public institutions may charge a fee if the search and preparation of requests takes more than 3

			hours ¹
	Office of the Information and Privacy Commissioner of Canada	<ul style="list-style-type: none"> -Time line for resolution relatively short (potentially a few months) -No time limits for complaints or access to information requests -Accessible to unrepresented litigants -Proceedings and outcomes are private 	<ul style="list-style-type: none"> -Privacy complaints have limited remedies: OIPC cannot award damages, and its enforcement mechanisms are relatively toothless -Cannot request personal information about others without their written consent
Criminal Charges	Criminal prosecution	<ul style="list-style-type: none"> -Abuser can be made subject to pre-conviction restrictions that prevent further abuse (no contact orders, limitations on movement or behaviour, etc.) -If prosecution is successful, abuser can face significant penalties such as imprisonment or house arrest, and be subject to a number of restrictions that prevent further abuse -Victim compensation may be available -Publication ban may be available to protect identity of complainant -Testimonial aids may be available 	<ul style="list-style-type: none"> -Complainants exercise no control over a criminal proceeding or whether charge will be laid -Time line for resolution can be very long (2–5 years) -Proceedings/decisions open to public

¹ See fee schedule at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/155_2012#section13

Complaints to Regulatory Body	Professional regulatory bodies (e.g., law societies, colleges, professional associations, etc.)	<ul style="list-style-type: none"> -Regulatory bodies usually are quite proactive, so are accessible to unrepresented litigants -Time line for resolution may be short (several months) -Anonymization may be available -Proceedings and outcomes usually private/anonymized 	<ul style="list-style-type: none"> -Complainants usually exercise a low level of control over regulatory proceedings -Usually, no personal remedies available from professional regulatory proceedings - Time line for resolution may be long (more than a year)
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CHAPTER 28: LEGAL COACHING: GUIDING SELF-REPRESENTED LITIGANTS TO ADVANCE THEIR CASE

By Sara Forte, with contributions from Angela Leung

F. Making Best Use of Time

The client has access to limited hours of legal advice. If they have not already pursued or initiated any legal processes, the allotted time will go very quickly. For a complex case, or if a client is traumatized, a review of the materials and an initial meeting can use up two or three hours. To make best use of the remaining time, consider helping the client to self-represent. This is known as offering “unbundled services” or a limited-scope retainer and can be extremely effective in increasing access to justice.

A key area of risk for both lawyers and clients with limited-scope retainers is potential confusion about who is responsible for various tasks, so it is very important to have clear, written communication about this. The retainer letter will indicate the limited scope of the lawyer’s involvement, but moving forward, using emails to record who is responsible for each task as the case progresses will help to avoid confusion or misunderstanding.² In addition, lawyers who offer unbundled legal services need to be comfortable with potentially not knowing all the details of a case and having less control than they have when they offer full representation. Collaborate with the client to determine what they can do themselves and where you can add the most value. Empowering the client to take responsibility to move their case forward themselves may give back a client a sense of control and can be rewarding for both the client and the lawyer.

The client’s goals should be a key consideration. If a quick settlement is their goal, reviewing an email drafted by the client or ghost-writing an email proposing settlement terms can be a very effective use of the available legal time. An email can often be written in 30 minutes, which leaves some time to support the client through the negotiation or direct them to self-help resources and complaint forms if a resolution is not possible. The client retains responsibility for receiving and reviewing the response. If they are well armed with information about resolution options, they may be able to continue negotiating without further legal advice.

If the client wants to pursue litigation, the time left after the initial meeting could be spent drafting or reviewing a complaint or pleading (one to two hours), connecting them with other advocates or representation, or supporting them through the process on an as-needed basis.

To make the most of the limited hours available:

- Provide an initial consultation and legal assessment, including choosing a legal forum for a complaint and outlining reasonable expectations for timelines, award, and resolution.

² The Law Society has a very detailed and helpful information resource on limited-scope retainers, including a webinar. See <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/lawyers-indemnity-fund/risk-management/practice-management-risks-and-tips/limited-scope-retainers-unbundling/>

- Ghost-write communication to the employer, including a demand (see the appendix of this chapter for a sample email).
- Provide links to online self-help materials, other advocacy services, and complaint forms. (SHARP Workplaces staff be able to help with this.)
- Review and provide feedback on a complaint or pleading drafted by the client before it is filed. (Sometimes it is faster to draft a simplified pleading for the client to file.)
- Advise on an as-needed basis throughout a legal process on process and strategy. That could include providing leading cases, reviewing the opposing side’s materials, and helping draft communications.
- Coach the client ahead of a mediation in process, strategy, and reasonable settlement terms.
- Review the proposed settlement agreements.
- Advise and provide support on presenting a case.

It will be challenging for a client to self-represent at a hearing, so consider their options for free legal representation (e.g., CLAS or LSLAP) if they choose to pursue an action or processes that take an investigation rather than hearing approach (for example, WorkSafeBC). SHARP Workplaces can help provide a client with contacts for referrals and, in the case of other CLAS programs, facilitate the connection.

Useful Resources

CLAS operates the BC Human Rights Clinic which provides free legal representation to people with an accepted BCHRT complaint who qualify for services:

<https://bchrc.net/>

LSLAP is the Law Students’ Legal Advice Program at the University of British Columbia.

It can provide legal advice for people in the Lower Mainland who may not be able to afford a lawyer: <https://www.lslap.bc.ca/>

G. SHARP Workplaces Legal Clinic Supports

SHARP Workplaces is committed to taking a holistic approach to assisting clients and recognizes that they are often dealing with myriad issues intertwined with their legal issue. Be aware of signs of background or other issues and ask the client about other areas of support they may find helpful—for example, counselling, employment, financial support, assistance drafting human rights complaints, or help with other legal issues. Lawyers are not expected to know all the services that are available. SHARP Workplaces staff can help in identifying services and providing referrals to clients as requested by the client or the lawyer.

If clients need assistance with sending documents, access to video-conferencing, or support in managing the process, SHARP Workplaces may be able to connect them with advocates or organizations that can help. To this end, SHARP Workplaces has partnered with Rise Women’s Virtual Legal Clinic to connect with Rise’s network of community partners located across the province. SHARP Workplaces Legal Clinic is also developing our wider referral network.

Additionally, in some circumstances and depending on capacity, SHARP Workplaces staff may be able to help clients with typing up their complaints or organizing their documents.

Lawyers can contact SHARP Workplaces directly by emailing SHARPWorkplaces@clasbc.net to request assistance for a client.

H. Appendix: Sample Ghost-Written Demand Where Harasser Was Manager/Owner

Subject: legal claims

[employer contact name],

I have been to see a lawyer about what happened to me when I was working for you. You kissing and hugging me at work, and your text messages calling me beautiful, and telling me you love me, are sexual harassment. I told you several times to stop this, and I have text messages to prove that it happened and that I asked you to stop, but you continued. After I objected to your inappropriate behaviour, you humiliated me in front of other staff, threatened to fire me, and demoted me. I have been advised that I can file a complaint against you and the company with the Human Rights Tribunal about this, and request wage loss damages and compensation for injury to my dignity.

Since you have made it impossible for me to keep working, you also owe me severance pay for constructive dismissal. Based on my age, length of service and the nature of my job as [title], severance pay would be around XX months' pay.

I do not want to get lawyers involved or start legal claims, and so I am making a without prejudice offer for a private settlement. I believe that \$XXX, paid as damages for injury to dignity, would be a reasonable amount to deal with all of this. You have one week to accept this offer, or I will be filing legal claims.

[client name]