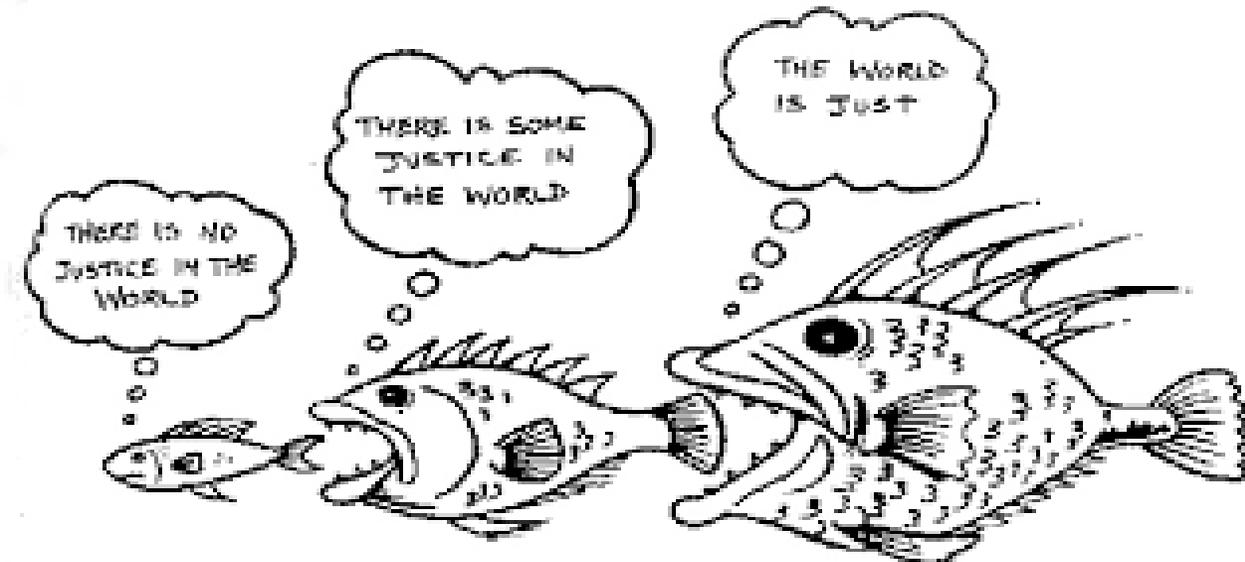


SHARP Workplaces offices are located on the traditional, unceded, and ancestral territories of the hən'q'əmin'əm' (Hulquminum) speaking x^wməθk^wəy'əm (Musqueam) and sə'lilw'ətaʔt (Tsleil-Waututh) Nations, and the S_kwx_wú7mesh sníchim (Squamish Snichim) speaking S_kwx_wú7mesh Úxwumixw (Squamish) Nation.

Outline

- Definitions
- Intersectionality
- Social constructions of gender
 - Best practices

What is workplace sexual harassment?



“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



GENDER IDENTITY



SEXUAL ORIENTATION



GENDER EXPRESSION



SEX ASSIGNED AT BIRTH



No thanks!

“Previous research has concluded that sexual harassment is primarily a punishment for people who deviate from traditional gender ideals, rather than an expression of sexual desire for those who conform...We know from research that, more often than not, sexual harassment is a put-down not a come-on.”

Annu. Rev. Organ. Psychol. Organ. Behav. 2021. 8:8.1–8.25. *Putting People Down and Pushing Them Out: Sexual Harassment in the Workplace (October 2020)*, Lilia M. Cortina and Maira A. Areguin, at p.8.17 & 8.20.

Gender-Based Violence in the Workplace

- Approximately **47%** of lesbian, gay, and bisexual workers have experienced harassment and/or violence in the workplace related to their sexual orientation
- Approximately **80% - 90%** of trans and gender variant workers have experienced harassment and/or violence in the workplace related to their gender identity and/or expression

(Catalyst, 2015 as cited in Bucik, 2016; James et al., 2016)

Gender Diversity

Gender non-conformity can result in harassment and discrimination, regardless of sexual orientation.

(Green & Brinkin, 1994; Lombardi, 2001)

- Examples:
 - Persistent misgendering
 - Questions about physical sex characteristics
 - Suggestive or demeaning jokes about attire
 - Or gender expression
 - Requirement to wear clothing not in line with gender identity
 - Comments that police or reinforce gender norms
 - Assuming there are only 2 genders

The Numbers

Poll:

- How much more likely are sexual minority men to experience unwanted sexual behaviour in public?

▪ Choices:

- Equal (1x)
- 2x
- 3x
- 4x

The Numbers

Proportion of women who reported that they had been sexually harassed at work in the past year, by characteristic (2016):

- Total, on average (3.8%)
- Lesbian and bisexual women (11%)
- Young women aged 15-24 (7.2%)
- Indigenous women (10.1%)
- Single women (6.6%)

Intersectionality

Kimberlé Crenshaw:
“Intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects.”



Kimberlé Crenshaw. Photograph by Jeff Berting

Where do gender norms come from?

Poll:

1. Where do gender norms come from?

1. Biology
2. Social context/culture
3. History
4. Intimate relationships

2. Gender is a social construct – True or False?

3. Sex is a social construct – true or false?

4. Gender and race are connected through the social construction of gender – true or false?

5. The gender binary is closely associated with colonialism – true or false?

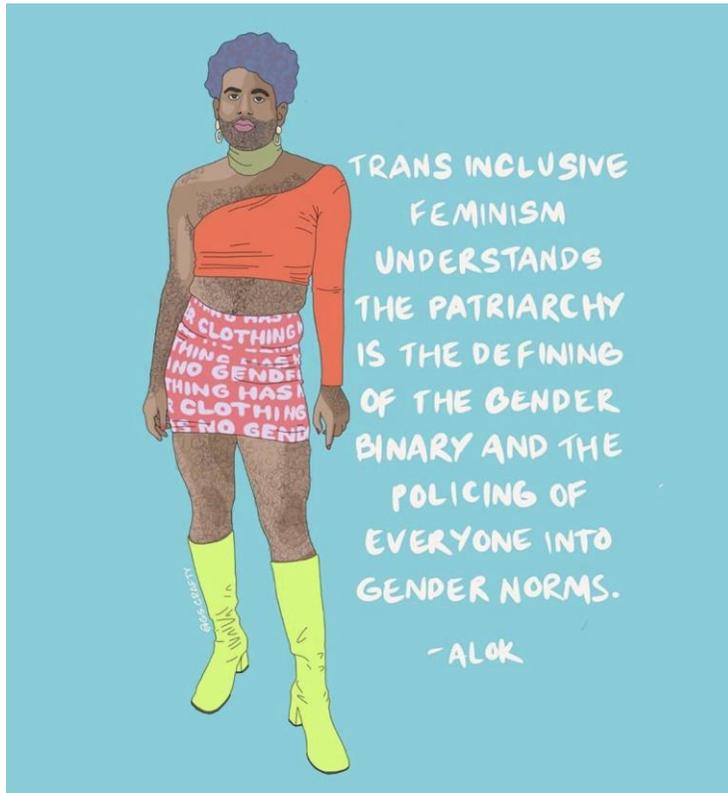
Two-Spirit People



www.egale.ca

The Deconstruction of Gender

Alokmenon.com



“The gender binary is the root cause of gender-based violence...There is no feminist binary. Binary thinking requires hierarchy and stereotype over reality.”

“A world with no gender norms might seem scary, but look at the world we are in right now. The gender system isn’t working.”

Alok Vaid Menon “The Difference Between Trans Rights and Ending the Gender Binary” Sept 10, 2020.

Gender and Racism

Alokvmenon.com



“Scientists argued that white people were superior because of their unique ability to display a visual difference between males and females... When using the word “women” scientists spoke exclusively about white women. Terms like “lower races” were used without reference to sex because scientists believed there were not significant sexual differences in BIPOC communities.”

...and workplace sexual harassment

“Sexual harassment, it appears, often has much to do with race (as well as class and other markers of social status). Intersectionality theory can help us understand how social constructions of race and gender penetrate organizational settings, and as such, inform the sexual harassment experiences of women of color.”

(Cortina, *supra* 2021)

Case Study: *Hashemi v. Elmabrouk*, 2019 HRTO 644

When asked...why she responded in that way, the applicant testified that in her original culture, to respond bluntly and directly in such a situation is not common or appropriate. Rather, she tries “not to cross boundaries and not break the wall between the two people.” (para 32)

The applicant testified that...the respondent was clearly sexually propositioning her...in her culture, “this type of conversation is making an offer and that we both understood what it meant.” (para 34)

...continued

- The “Sigheh” proposition was given context by the applicant’s creed and cultural heritage in two ways: first...both parties would mutually recognize it as a proposition; and second...both understood that offering that a woman become one’s “Sigheh” is to, in a way, ‘legitimize’ a sexual solicitation... (para 66)
- Her creed, and the parties’ shared cultural understanding of this concept, thus enabled the solicitation. I find that, at the very least, the specific offer to be a “Sigheh” would likely not have been made...if not for her creed, and the shared cultural background... (para 66)
- I also find that the shared cultural background of the applicant and individual respondent made her vulnerable as well, as it inhibited her ability to, and comfort with straightforwardly rebuffing the...respondent’s attentions, something that she feels the individual respondent knew and took advantage of. (para 79)

Romman v. Sea-West Holdings Ltd., 1984 CanLII 5031
(CHRT)

“It should never be part of a person's employment environment...to have to submit to the touching of the genitals...Nobody should have to put up with that as part of having a job. It is clear from the evidence that Mr. Romman in no way welcomed these advances or promoted them. He reported them...and made it clear that these advances were unwelcome and worrisome. In my opinion, there is a duty upon the owner...to put an immediate stop to such practices.” (para 14)

Hanes v. M & M Ventures Inc., 1998 CanLII 19191 (SK HRT)

- Ms. Hanes testified about general "bum patting" by Mrs. Wight, but there was no suggestion that this was sexual. I accept that these actions were innocent of a sexual connotation. (para 33)
- As Mrs. Wight walked by Ms. Hanes on the ladder at the cooler, the former asked the latter if she'd like to have a screw and put it between Ms. Hanes' legs a few inches from her private parts. (para 38)
- I have had some difficulty deciding if joking about sexual activity (which may be offensive to some) with fellow members of the same sex can constitute sexual harassment. Certainly no sexual favours were demanded. Rather the allegation is that the workplace was poisoned by the sexual joking...Crude language about sexual activity is not necessarily sexual harassment. (paras 79-80)

Chilliwack Teachers' Association v. Neufeld, 2021 BCHRT 6

While common sense might support the claim that a person would be negatively affected by a workplace tainted by discrimination against others, BCTF has not provided...evidence to demonstrate any specific discriminatory impact on non-LGTBQ teachers.

Concern for others in the work environment or anxiety about supporting others are the sorts of issues that would be expected in a workplace that is not discrimination-free. However, without a concrete understanding of the impact on a person's work or work environment, there would be no reasonable prospect of proving that such effects rise to the level of discrimination.

(para 120)



To the Jam Board!

Working with 2SLGBTQ Clients

Do

- Ask for your client's pronouns and preferred name on intake form
 - Provide "other" or "prefer not to disclose" options
- Recognize and counteract hetero- and cis-sexism
- Discuss strategies for navigating identity management
- Provide 2SLGBTQ specific referrals

Do not

- Make assumptions about gender or sexual orientation based on appearances
- Over-emphasize the role a diverse gender or sexual identity may have in a legal matter
- Assume the experiences of gay, lesbian, bisexual, Two-Spirit, transgender, non-binary folks are the same
- Out someone without consent, ever

Best Practices

- Make your client aware of all their options – legal and otherwise.
- Challenge your assumptions and consider how your own identities influence your understanding of gender.
- Demonstrate awareness of intersecting factors and take them all into consideration.
- Empower your client, in whatever they choose to do, without judgement. Make sure they are aware of any legal consequences or impacts.
- Thank them for sharing with you and showing courage in the face of a difficult situation.
- Be consistent, reliable and predictable.

Q & A



SUPPORTS AVAILABLE

- **VictimLinkBC**
Call 1.800.563.0808
Text 604.836.6381
- **Ending Violence Association of BC**
www.endingviolence.org/needhelp
- **WorkSafeBC Crisis Support Line**
Call 1.800.624.2928 (toll free)