An Examination of the Mediation Process as it is Used to Resolve Sexual Harassment Complaints in Canadian Universities

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Abstract

The ways in which the process of mediation affected those involved in the resolution of sexual harassment complaints in Canadian universities were explored. Questionnaires were sent to forty-six Canadian universities and interviews were conducted with fifteen advisors. An analysis of the twenty-two questionnaires returned indicated that mediation was utilized in 11% of the sexual harassment complaints and effected a successful resolution in 67% of these. Both complainants and those complained against were reported to have spoken more favourably than unfavourably about the process and outcome of mediation. Questionnaire respondents in general found mediation a slightly less than satisfactory method of complaint resolution. Those respondents who had successfully used mediation; however, describe its usefulness within a university context.
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In loving memory of Elaine Patricia Bown 1971-1988
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CHAPTER ONE: THE PROBLEM

Introduction

This study is an examination of the mediation process as it is used to resolve sexual harassment complaints in Canadian universities.

Sexual harassment in the workplace is prohibited in Canada by a 1981 amendment to the Human Rights Act. Subsequent legal interpretations have determined that employers have a legal responsibility to ensure that the workplace is free from sexual harassment. In a university environment, students, rather than employees, constitute the majority, and might, therefore, be considered to be exempt from the legislation. In May, 1982, however, the Canadian Association of University Teachers (CAUT) adopted a policy which clearly included all students. This policy requires each university to have clear procedures for processing complaints of sexual harassment. The CAUT (1986) recommended that "(t)he parties should agree on an appropriate person or body to whom complaints can be made" (p. 37) and the requirement of some component of mediation (See Appendix A).
Although compliance with these recommendations is not compulsory, almost all Canadian universities now have in place policies and procedures for dealing with sexual harassment. Through these policies, sexual harassment complaints may be resolved at one of two levels, "informal" or "formal." At the informal level, the emphasis is on change through education and any agreement reached is usually confidential to the parties involved. The formal level is investigative and necessarily less confidential. If the complaint is found to be justified, the outcome is more punitive in nature.

Methods of complaint resolution are specific to each university; however, many universities use mediation as a part of their resolution process at either the informal or formal level of complaint resolution. Less frequently, it is a required step in initiating a formal complaint.

Background of the Problem

Because of the confidential nature of the mediation process, it is difficult to examine and evaluate the effects of the process on either the complainant or the
respondent. How then can we decide if mediation helps rather than hinders those it is designed to assist?

This question became important to me when I was appointed to the position of Sexual Harassment Advisor, Brock University, in January, 1990. Since then, I have been involved in sexual harassment policy development, educational programmes and dealing with complaints as well as becoming familiar with the legal background of sexual harassment resolution.

I quickly found that there was little consensus about how complaints should be dealt with, or, indeed, whose responsibility it should be to resolve them. One argument is that resolving their own complaint empowers the victims of sexual harassment; however, this is not always possible. The power differential may simply be too great for the victim to overcome. Mediation, by bringing together the complainant and the respondent in a way that gives them equal power and equal responsibility for the outcome, provides a means of resolving the complaint.

Mediation has become an accepted form of dispute resolution in many areas of the justice system. It was developed initially as a means of dealing with labour disputes and has become accepted in some communities as
a means of easing racial and community relations, as well as in the courts for victim/offender reconciliation. It is increasingly used in divorce agreements where there is no wife abuse involved. It is not, however, without its critics. Shortly after I was appointed Sexual Harassment Advisor in 1990, I attended the North American Conference on Sexual Harassment, Abusive Management and Workplace Abuse in Seattle, Washington, where I heard a strong denouncement of mediation as a process for resolving sexual harassment complaints. The reasons given were that mediation maintains the power differential already present in sexual harassment situations and is therefore more likely to favour the respondent; and that, in maintaining the privacy of the complaint, it protects the perpetrator and encourages more harassment.

This left me feeling very confused, had all of these universities adopted a process that was not only expensive (training of several mediators) but also injurious to the complainant? Since little research has been done on the process of mediation as it affects the participants, I was concerned that any assumptions about the process of mediation might be based solely on theory and have little connection with the reality of the
situation for the participants. I wanted to look outside and at the experiences of others.

Statement of the Problem Situation

A study of the literature related to the resolution of sexual harassment raises several questions. The similarities between the effects of sexual harassment and wife abuse are well documented and outlined in Chapter Two. Mediation has not usually been recommended in divorce settlements where there has been wife abuse, mostly because of the power imbalance involved and the fear of retaliation against the wife. However, recent research shows that mediation of divorce agreements can be successful, with women achieving a better settlement than those women who had had their divorce agreement arbitrated. Concerns regarding power imbalance and retaliation have been raised regarding sexual harassment complaints resolved by mediation. Students who have been harassed by a professor may have to continue working in the same Department for several years, in order to complete a degree. Problems of power imbalance in the university setting have to be weighed against the
complainant's need for confidentiality and fear of negative reactions resulting from a public hearing.

I felt that there was a need for a further examination of the issues specific to the university setting. According to Stephen Lewis (1990), the means shape the end. The process of any action determines the outcome. Is the process one that empowers the complainant in a way that leads to a satisfactory solution according to her (or his) criteria? Does the complainant desire to be empowered, and, if not, does the university ever have the right to demand that the complainant take direct action in the resolution of a complaint? I felt that I would not know until I listened to the personal experiences and needs of those involved in the process. This study is an exploration of the way(s) in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian universities and to try to determine whether mediation is an appropriate method of resolving these complaints.
Assumptions and Limitations

Because sexual harassment complaints resolved by mediation are confidential, it is not possible to obtain the names of individual complainants. Asking mediators to question participants immediately after the mediation process is completed may have changed the focus and outcome of mediation. I felt, therefore, that talking to mediators, as key informants, represented the best possible method of conducting the research.

It must be understood, however, that although this research attempts to improve our understanding of the mediation process as it affects the complainant and the person complained against, direct access to either is clearly not possible and they are "heard" only through the mediator. The mediator represents the university in the conflict and, although the mediator may be viewed as a "neutral party" to the proceedings, it is to be expected that s/he will bring to the process a very different perspective than that of either the complainant or the person complained against. It is clear also that this perspective will colour and direct his/her response to the questions asked. Advisors and
mediators do not work in a vacuum. Current policy and thinking at their university may make it difficult for them to hear or look beyond that policy to the different views of those in conflict. In my role as Sexual Harassment Advisor, I helped develop policy at Brock University that allows the use of mediation at the Informal level of complaint resolution. The Advisor acts as mediator. At the time I began this research, I had not had any training in mediation techniques; however, over the course of the research I did attend mediation workshops and have mediated complaint resolutions. I recognize that my experiences will colour my interpretation; however, to keep the research as objective as possible, I chose not to make Brock University a part of the data base and I have not used the personal voice in this research. While accepting that this might be the basis for some criticism, I want the data to reflect what is happening in universities across Canada, and not to interpret them as they relate to Brock.

I listened to what mediators have to say about the process and outcomes of mediation. I interviewed fifteen Sexual Harassment Officers, Advisors or Mediators, as well as reading the comments on the returned
questionnaires (See Appendix B for survey form used). Based on data from these sources, I am able to discuss the role mediation has played in resolving sexual harassment complaints and I describe the forms of mediation which have been utilized. The results increase our understanding of the current role of mediation in complaint resolution at Canadian universities.

Universities are searching for ways of achieving satisfactory outcomes to complaints of sexual harassment. However, the concept of "satisfactory outcome" may not be the same for the university and the complainant. Listening to what those directly involved feel about the process provides a broader base on which to base discussions about complaint resolution procedures. Universities, as they develop sexual harassment policy and procedures, can benefit from a clearer understanding of the issues related to current realities in Canada.

Definition of Terms

Arbitration - settlement of a dispute by an arbitrator - a person appointed by the parties involved or imposed by a higher authority.
CAUT Policy - The Canadian Association of University Teachers has a policy which requires each university to have clear procedures for processing complaints of sexual harassment (Appendix A). These include the appointment of a sexual harassment officer and the requirement of some component of mediation (Bielby, 1990).

CAASHHE - Canadian Association Against Sexual Harassment in Higher Education. The membership includes Sexual Harassment Advisor and Officers, Mediators and Employment Equity Administrators from Canadian universities, colleges and community organizations.

Canadian Human Rights Act - based on the United Nations declaration of the inherent dignity and the equal and inalienable rights of all members of the human family, the Canadian Human Rights Act was amended in July, 1983, to include harassment on all prohibited grounds. Sexual harassment is discrimination on the ground of sex.

Human Rights Commission - established under the mandate of Federal and provincial legislation which prohibits
sexual discrimination, including sexual harassment, the Human Rights Commission investigates and attempt to resolve such complaints.

**Mediation** - a process for settling disputes, freely entered into by the participants, by which they attempt to reach a settlement that is satisfactory to both. This is achieved with the help of a mediator. The concept of mediation assumes the disputants have a willingness to reach an agreement, responsibility for their actions and an equal power to negotiate. The process and results of mediation are confidential (Magee, 1989).

**Mediation Practice** - "The practice of mediation falls along a spectrum that defies a strict definition. The specifics of mediation depend on what is being mediated, the parties in dispute, who is doing the mediating, and the setting in which mediation is offered. Mediation is first and foremost a process that transcends the content of the conflict it is intended to resolve" (Folberg, Taylor, 1984).

**Mediator** - a neutral third party agreed on by the disputants to help them achieve an agreement
satisfactory to both. The concept of mediator neutrality has been challenged from within and outside the profession. University mediators are usually selected individuals from within the university who receive training in mediation techniques. Usually there is a pool of mediators to choose from for a specific complaint. Occasionally the Sexual Harassment Advisor also serves as a mediator for complaints.

**Patriarchy** - a system of society, government, etc., ruled by a man and with descent through the male line (Oxford Dictionary, 1990).

**Poisonous and Offensive Work Environment** - even though submission to sexual activity is not necessarily or explicitly made a term of employment, the individual is given a work environment which is intimidating, hostile and offensive (Aggarwal, 1992).

**Power Imbalance** - the imbalance of power based on gender. In patriarchal societies, women are subordinate to men because they lack the power to "determine, manipulate, rule or influence the actions of others" (Whittington, 1990).
Sexual Harassment - sexual harassment is "any sexually-oriented practice that endangers an individual's continued employment, negatively affects his/her work performance or undermines his/her sense of personal dignity. Harassment behaviour may manifest itself blatantly in forms such as leering, grabbing, and even sexual assault. More subtle forms of sexual harassment may include sexual innuendos, and propositions for dates or sexual favours. ... the majority of victims are women" (Aggarwal, 1992).
CHAPTER TWO: REVIEW OF RELATED LITERATURE

Introduction

In this chapter, I will trace the history of sexual harassment legislation in Canada and the development of sexual harassment policies in Canadian universities. The effects of sexual harassment and their similarities to the effects of wife abuse will be discussed. Finally, the process of mediation and arguments for and against the use of mediation in resolving sexual harassment complaints, will be presented.

Sexual Harassment

Woman's sexuality has been perceived as belonging to the primary male in her life, whether that be her father or husband, ever since the establishment of the present patriarchal society, when men gained domination over women. It was not always so. Eisler (1987) writes in *The Chalice and the Blade* "(w)e are all familiar with legends about an earlier, more harmonious and peaceful age. The Bible tells of a garden where woman and man lived in harmony with each other and nature - before a
male god decreed that woman henceforth be subservient to man " (p. xv). It is only in very recent times that women have regained ownership of their sexuality. In feudal times, several European countries observed the practice of "droit du seigneur," the right of the first night, by which the king or feudal landlord had the right to take to bed the bride before her husband. Records of this practice go back to Sumerian times. It continued throughout most of Europe into the eleventh or twelfth century, possibly later in France (Tannahill, 1982)¹. A more obvious form of ownership took place in societies where slavery was practiced. Female slaves became the sexual property of the master and were his to "lend" to anyone he wished. Since slaves had no legal right to refuse, rape was not considered an issue. Indeed, when ever morality was debated as an issue, the morality in question was always that of the female, not the male (Backhouse, Cohen, 1978).

Concern for the sexual morality of working women has been documented since women first started working outside of their homes in the Industrial Revolution. Commissions in Britain and Canada in the 1880s explored

¹Although the source used indicates that the "droit du seigneur" was a reality, such stories may, of course, be apocryphal.
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the low state of morals among the workers in all industries. No distinction was made between consenting and coercive relationships, the search was for immorality, particularly in women, as a result of the poor working conditions (Backhouse, Cohen, 1978).

This focus on women's morality was brought to fever pitch in Toronto in 1915 when an 18-year-old girl, Carrie Davies, was found not guilty of the murder of her employer, Charles Albert Massey, a member of one of the wealthiest Canadian families of the time. Her employer had been sexually harassing Carrie; however, the trial focussed on her morality. Several doctors were summoned by the defense lawyers to testify that Carrie was a virgin. Carrie's successful struggle to defend her maidenhead was probably the deciding factor in her acquittal. Massey's sexual harassment of Carrie was never an important part of the trial proceedings (Backhouse, Cohen, 1978).

It was not until 1978 that sexual harassment in the workplace first received widespread attention in Canada with the publication of the book The Secret Oppression. In their book, Backhouse and Cohen describe how, when they researched material for articles of interest to working women, the issue of sexual harassment became a
recurring theme. In the Introduction to the book, they state "As we began our research, it very quickly became apparent to us that sexual harassment was a rampant feature of all working environments" (p. 1). Their research indicated "sexual harassment affects all working women, regardless of their age, physical appearance, social status, or job category" (p. 1).

The Secret Oppression had the effect of making a private problem public. It also pointed out that sexual harassment often takes place in work situations where there is a power differential. Since women have traditionally held subordinate positions to men in the work force, sexual harassment is generally perpetrated by men against women. The Secret Oppression also highlighted the need for specific legislation to deal with complaints. At that time, unions and management did not believe that sexual harassment was a widespread problem and, consequently, there were no workplace policies or procedures for dealing with it. Since sexual harassment could not be dealt with within the workplace, women who wanted to complain had to do so through a human rights organization, criminal proceedings or civil litigation in the courts, all of which presented problems.
Criminal proceedings presented the gravest difficulties, as the woman was often treated as though she were on trial. Police would often not press charges as there had been no witnesses to the incidents, and the woman's past sexual history was frequently examined to ascertain whether she was of "chaste character." Trials were usually public, throwing another strain on the woman (Backhouse, Cohen, 1978).

Civil litigation, with the woman suing her employer for the damages she had suffered as a result of sexual harassment, was perceived to be a better option as the woman had more control over the proceedings, and could sue both the sexual harasser and the organization. Employers tended to take this kind of legal action more seriously as there could be direct financial repercussions. The disadvantage was that, if the Court found in the woman's favour, there was no pressure put on the employer to reinstate her, or any protection from further harassment if she retained her job. The cost of retaining a lawyer was often prohibitive (Backhouse, Cohen, 1978).

Legislation prohibiting sex discrimination did not specifically prohibit sexual harassment on the job and
human rights commissions did not usually take such cases seriously, so that, as Backhouse and Cohen (1978) state:

- most human rights bodies had unwritten policies that no written record should be kept of such complaints and that only "informal" efforts should be made to assist women with such problems. (p. 11)

The rationale was that sexual harassment problems were somehow "embarrassing" and should be dealt with as quietly as possible. In the late 1970s, pressure from women's groups made some Provinces re-evaluate their policies; however, the general tendency was to try to settle the matter by conciliation, usually a promise that future behaviour would not breach human rights legislation. Since the harasser had to be found to be a "relentless repeater" and other harassed women found to testify on her behalf, the process was not one that encouraged many women to come forward. Most of the women who complained formally had lost their job and the others often were fired or found that they were ostracized by their co-workers and treated as though they were the guilty one (Backhouse, Cohen, 1978).

Canadian jurisprudence on sexual harassment began with a landmark decision of a board of inquiry under the Ontario Human Rights Code in 1980, in what has become
known as the "Cherie Bell Case" (1980, 1 C.H.R.R. d/155, Shime, Ontario). In hearing the complaints of two female employees alleging that they had been sexually harassed by the owner of the restaurant where they were employed, adjudicator Shime ruled that sexual harassment constitutes sexual discrimination prohibited by the Ontario Human Rights Code. Subsequently, in 1981, the Ontario Human Rights Code was specifically amended to incorporate a prohibition against sexual harassment in the workplace.

Another landmark case was that of Bonnie Robichaud. After dismissal of the case by the first federal human rights tribunal to enquire into a sexual harassment complaint in July, 1982, a subsequent review tribunal found that cleaning staff foreman Dennis Brennan did sexually harass Bonnie Robichaud and subsequently "used his authority in a capricious manner" (p. 4, Canadian Human Rights Commission, 1984) including rewarding the foreman who testified before the tribunal on his behalf and punishing a woman who testified against him. Both the employer, the Department of National Defence and Treasury Board, and the employee were found liable. The decision changed the legal situation related to sexual harassment in several important ways. It was determined
that consent to sexual activities under duress did not constitute willingness for the activities to take place. The concept of a "poisoned work environment" was introduced, and employers were mandated to establish procedures for filing and following-up complaints of sexual harassment with no retaliation against a complainant. Most significantly, employers were also deemed responsible for the behaviours of their employees and therefore responsible for communicating a clearly defined policy against sexual harassment in the workplace.

On April 25, 1983, a one-woman tribunal, Susan M. Ashley awarded a woman damages totalling $5,000 when she held both the Canadian Employment and Immigration Commission (CEIC) responsible for harassment, along with the manager (Canadian Human Rights Commission, 1984). Ashley's decision dealt with the question of employer responsibility for harassment. She clarified and extended previous legislation when she wrote that managers and supervisors must themselves be aware that sexual harassment is prohibited conduct under the Canadian Human Rights Act and that employers have a responsibility to advise their supervisory personnel and employees about the significance and consequences of
sexual harassment. The distinction between flirtation and sexual harassment should be made and "(w)hen a complaint is made, it must be dealt with as a serious matter, not by a gentle tap on the fingers, but as a potential breach of a statute" (p. 9). In order to facilitate this, Ashley wrote that employers should advise their employees that sexual interplay that has, or may reasonably appear to have, employment consequences - either direct, in the nature of firing, loss of benefits, etc. or indirect, such as an adverse effect on the work environment, is improper. Complaint mechanisms should be in place so that complaints can be made confidentially and without fear of reprisals.

In July, 1983, Parliament amended the Canadian Human Rights Act to include harassment on all prohibited grounds. Sexual harassment is discrimination on the ground of sex (Canadian Human Rights Act, 1978). The Act does not, however, define or describe sexual harassment. More recently, the Government of Canada has further prohibited sexual harassment under the Canada Labour Code, Part III (1985), which does provide a definition, albeit a limited one. It defines "sexual harassment" as

(A)ny conduct, comment, gesture or contact of a sexual nature
(a) that is likely to cause offence or humiliation to any employee; or

(b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion (p. 40).

In 1989, stating that "that only an employer can remedy undesirable effects; only an employer can provide the most important remedy - a healthy work environment," (D/4330) the Supreme Court held the Department of National Defence responsible for the acts of sexual harassment committed by Robichaud's supervisor. The Court found this liability to be statutory in nature, placing "responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions" (D/4327).

Under the Ontario Human Rights Code (1981), an employer can be held liable for acts of sexual harassment pursuant to Subsection 40(4) if the employer knew or ought to have known of the sexual harassment and failed to take "reasonably available means" to penalize or prevent the conduct.
The Supreme Court emphasizes in the 1987 Robichaud v. Canada (Treasury Board) appeal that the purpose of human rights legislation is the removal of discrimination rather than the punishment of anti-social behaviour. The motives or intentions of those who discriminate are not relevant because human rights legislation is concerned about the effects of discrimination rather than its causes or motivations.

Federal and Provincial Human Rights Commissions can only deal with sexual harassment complaints if the incidents are connected with work or are connected in some way with services or accommodation. However, in May 1986, CAUT (Canadian Association of University Teachers) adopted policies against sexual harassment that included students. These policies state that:

Sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status or academic accreditation,

(b) submission to or rejection of such conduct by an individual is used as the basis for employment,
academic status or academic accreditation decisions affecting such individual, or
(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating and intimidating, hostile, or offensive working or academic environment. (p. 37) (see Appendix B).

Sexual Harassment in Universities

One of the earliest Canadian studies of sexual harassment on a university campus was a survey of undergraduate and graduate women students at the University of Calgary conducted by the Status of Women Committee in the Fall of 1980 and the Winter of 1981. Cammaert (1985) reports that they found "(e)xperiencing sexually inappropriate and harassing behaviour appears to be a relatively common experience for women students at Calgary" (p. 395). Cammaert (1985) felt that "the frequency of experiencing sexually inappropriate behaviour as reported by the University of Calgary undergraduate (30%) and graduate (23%) students is lower than the figures reported for women in the workplace (40-88%)" (p. 395). She felt that this might be due to
the fact that the university study was a random sample, whereas, in the workplace studies, the population might be self-selected. The percentages are, however, greater than that found at The University of Manitoba.

In November, 1987, the University of Manitoba sent out a Sexual Harassment Survey to 1,783 randomly selected students, support staff and academic staff. They found that 14.8% female undergraduates, 19.3% female graduates, 17.3% female staff, 15.7% females (all groups), and 4.2% males reported some form of sexual harassment. These figures are lower than those of the University of Calgary but perhaps more reliable, as the response rate was 67.8%. In the Calgary survey, the sample size and percentage of questionnaires returned were low (33% of 800 sent at the undergraduate level and 43% of the 200 sent at the graduate level). One interesting point is that at Manitoba, graduate students report a higher incidence of sexual harassment than undergraduates.

Problems in defining what behaviours constitute sexual harassment also make it difficult to compare results of surveys. In their paper, Kenig and Ryan (1986) examined several studies of the frequency and type of harassment on campus. They concluded that the
quality of samples and measures of sexual harassment varied widely. From their analysis, it appeared that between 15% and 35% of college females experience some sort of behavior that might be interpreted as sexual harassment. The range of harassing behaviours varies from verbal innuendoes and jokes to coercion into sexual activity. According to Dzeich & Weiner (1990), of particular concern to researchers is the extent of sexual harassment of female students by male professors which has traditionally been ignored or covered up. This concern is related to the extreme power imbalance in the student/faculty relationship and the negative effects on the student.

Cammaert (1985) found that most victims did not report the incidents, with some seeking help only in resolving their feelings of confusion, anxiety, anger, and depression. Whether or not sexual harassment will be reported appears to depend on several variables, including the severity of the harassment, fear of being accused of lying and fear of the reporting process (Sullivan and Bybee, 1987). In order to facilitate reporting, Sullivan and Bybee conclude that students should have no reason to fear being accused of lying or being blamed for the incident. It is necessary to have a
process for dealing with complaints that provides confidentiality, public confirmation that the process actually works and that reporting leads to administrative action to stop the harassment.

Effects of Sexual Harassment


Effects range from simple annoyance to loss of job; from the loss of self-esteem to anger and rage; from a feeling of helplessness to a state of distress, anxiety and depression. Prone to distress, seeing themselves trapped, helpless and not in control, on the verge of depression, with their self-esteem broken down, they lose confidence in themselves and in others, feel ashamed and that they "asked for it". (p. 48).

The studies cited also found that sexual harassment is a question of power with few victims reporting the incidents mostly out of fear of not being taken
seriously and fear of serious reprisals. Their fears appear to be well founded. Gosselin (1984) found that 45% of those reporting sexual harassment lost their job. Martin (1984) found that among respondents who had taken formal action, 41% found that their actions had no effect or made things worse. Male management of organizations tend to "close ranks" and not believe the complainant. Co-workers or colleagues often provide little or no support and the complainant is often felt to be at fault, "loose," or lacking a sense of humour.

Sexual Harassment and Wife Abuse

As Grahame (1985) points out:
(t)he similarity of the experiences of victims of sexual harassment, rape, and wife battering have been noted by many feminists. Like rape victims, sexual harassment victims feel a sense of guilt, shame, and powerlessness. Academic women who experience sexual harassment have been likened to battered wives in the sense that they are too embarrassed to talk about the harassment, too worried about retaliation, and too concerned that
they will be accused of having invited or deserved it. (p. 118)

As with wife abuse, sexual harassment has recently moved from a private to a public issue. Both wife abuse and sexual interactions between workers were thought to be the business of no-one other than the parties involved. Male sexual promiscuity and domination of female sexual expressiveness was thought to be a natural phenomenon. With the emergence of private property and the patriarchal social system, women's sexuality became a commodity to be traded by her family for marriage. Anything that sullied the woman's sexual integrity was a cause for real concern as it lessened or destroyed her chances of marriage and economic protection. Although conditions with respect to virginity and marriage have changed, sexual harassment is a form of social control in that the woman's sexuality is violated, trivialized and controlled by the harasser, thus it is seen as a form of violence against women (Grahame, 1985).

As well as the similarities in effects, and in the historic perspective of woman as a sexual commodity, there is described a third similarity between sexual harassment and wife abuse and that is the imbalance of power between the participants. As Whittington (1990)
states, "Power is the ability to determine, rule or influence the actions of others. Power necessitates a hierarchy: those who possess power dominate those who lack it; the powerless are subordinate to the powerful." (p. 99). Feminist scholars view sexual harassment as a form of interpersonal behaviour that perpetuates a social structure in which women are subordinated as a class, thereby limiting their opportunities (Walker, Erickson & Woolsey, 1980; Benson & Thompson, 1982; Crocker, 1983; MacKinnon, 1979; Stanko, 1983, 1985; Hoffman, 1986).

It is a truism to state that women have always been subordinate to men; however, it is also true that they have struggled against that domination with varying degrees of success. At present, women are better able to take control of their own lives than perhaps any other time in recent human history. Canadian women have specific rights and freedoms guaranteed by the Constitution. University education and professional careers are options that were prohibited until relatively recently. These choices are the result of long-fought battles against oppression and it would be inaccurate to imply that women do not have the strength or resources to win their battles, both in the workplace
and at home. In 1988, the Department of Justice, Canada, released their **Divorce and Family Mediation Research Study in Three Canadian Cities**. This, and other studies, indicate that it is women who initiate the majority of separations and divorces. Abuse may continue within relationships, whether family or workplace; however, women are finding the means of ending that abuse.

**Mediation**

Mediation is an increasingly widely used method of resolving conflict in Canada. It developed almost twenty years ago as an alternative to the formal procedures of the criminal justice system. It is now used for victim-offender reconciliation, divorce mediation, community dispute resolution and race-related conflict management. Labour-management conciliation and mediation and Ombudsman legislation initiated throughout Canada during the 1970s is also part of this movement. In the early and mid-1980s, educators began to experiment with conflict resolution projects and curricula in elementary and secondary schools and universities (Interaction 1990).
In the present work, an analytical solution was developed for the steady-state diffusion of a reactive species in a porous medium. The governing equation for this phenomenon is given by

\[ \nabla \cdot (D \nabla C) = 0 \]

where \( C \) is the concentration of the reactive species and \( D \) is the diffusion coefficient. The boundary conditions were taken to be of the type

\[ C = C_0 \quad \text{at} \quad \Gamma_1 \]

\[ \nabla C \cdot n = 0 \quad \text{at} \quad \Gamma_2 \]

where \( \Gamma_1 \) and \( \Gamma_2 \) represent the exterior and interior boundaries, respectively. The analytical solution was obtained using the method of separation of variables and the solution was validated through numerical simulations. The results showed good agreement with the experimental data.
Mediation is now used in many Canadian universities as part of their procedures for managing sexual harassment complaints, usually at the informal level. Mediation is seen by some as a means by which the people involved can work out a solution to their dispute, with the help of "an acceptable, impartial, neutral, third party to assist the parties in voluntarily reaching a solution they can both live with" (Magee, McLeod MacKnight, 1989). However, the need for a mediator to be either impartial or neutral has been questioned by several researchers in recent years. Carnevale (1986) writes: "mediation is a strategic game in which mediators, as well as disputants, have objectives, choices and tactics" (p.41). He continues:

(t)here are four fundamental strategies available to the mediator: integration, which involves efforts to find a solution within the region of common ground; pressing, which involves efforts to reduce the set of nonagreement alternatives, compensation, which involves efforts to enhance the set of agreement alternatives; and inaction, which involves letting the disputants handle the controversy by themselves. The strategic choice model suggests that disputants should prefer
mediators who value their aspirations; this type of mediator will try to integrate or will provide compensation. Integrating is probably the most difficult and time-consuming mediator strategy, and the one where third parties perhaps show the greatest variability in skilled application. It is the one strategy where mediator training is especially likely to pay off. There are indications that mediators are more likely to press at the later stages of negotiation. (p. 42)

Mediation use in Sexual Harassment Complaints

A study of the literature on mediation as it relates to sexual harassment complaints raises two major issues. These are that of power imbalance and whether mediator neutrality precludes any intervention on behalf of the complainant, and the necessity for a public or private resolution of the complaint.

Mediation traditionally assumes equal power of the participants, neutrality of the mediator and a willingness to negotiate, coupled with a desire for confidentiality, on the part of the disputants. It has been argued that, as in wife abuse cases, there is a
power imbalance in most sexual harassment conflicts. Most sexual harassment complainants are female, most perpetrators male. Even when the harasser is not in an obvious position of authority, (e.g., in a professor student situation), a power imbalance exists because in our society, males and females are not socialized equally. Leitch (1986) points out that men and women enter negotiations with different world views which will affect their negotiation expectations and strategies. Women are socialized to be subordinate, other-orientated and co-operative. Leitch is discussing divorce mediation; however, parallels have been drawn with sexual harassment cases.

Arsenault (1990), critiques mediation in cases of family violence on several grounds. She argues:

(a)n emphasis on the need for abusers to be held accountable for their actions has served to demystify domestic violence and vindicate victims and survivors ... violence is employed as a means of gaining and maintaining power in one's relationship. This power imbalance has the potential to profoundly affect the outcome of any attempts at mediation. By the time an abused woman reaches mediation, she has typically survived a
tremendous amount of violence. She has learned ways to cope with her situation and appease her abuser. These dynamics will be carried into the mediator's office ... a lack of standards, guidelines and training means that individual mediators vary in their response to abuse cases. (p. 6)

Davis and Salem (1984) believe that mediation is the ideal method of dealing with power imbalance as the mediator can balance the power in favour of the weaker negotiator. They concede, however, that a proposed settlement, though unequal, might be the best that the weaker party can reasonably expect, thereby negating the idea of complete equality in negotiating strengths. Mayer (1987), on the other hand, states "mediation cannot address basic inequities fostered by unequal power relations or by social policy" (p. 84).

These conclusions are not supported by the Department of Justice Divorce and Family Mediation Research Study in Three Canadian Cities (1988). In this study, the outcome of mediation was compared to outcomes obtained through adversarial means (i.e., lawyer or court case) and found "on average, women do better under
mediated than non-mediated settlements" (p. 182). This applied to financial as well as custody issues.

Although not utilized frequently - the Study states that "only about three percent of cases flowing through the family courts involve divorce mediation and/or counselling" (p. 181) - mediation appears to have a reasonable chance of success. The study concludes that mediation is successful in about sixty-four percent of cases. The commonest reason given for not using mediation was that the parties did not know about it. Mediation did not appear to be undesired by women, indeed more women than men suggested mediation.

There is a growing recognition that it is not only unrealistic to expect a mediator to be totally impartial; it is acceptable, even preferable, that he or she have some desired outcome in mind at the beginning of the proceedings. A study by Wittmer, Carnevale and Walker (1991) elaborates on this. They state:

Touval (1982) and Zartman and Touval questioned the assumed superiority of impartial or unbiased mediators. In disputing the impartiality assertion, Touval (1982) indicated that impartiality is not an indispensable condition for mediator acceptability or success. A biased mediator may be acceptable
because that mediator has the ability to provide acceptable outcomes (Zartman and Touval 1985). Zartman and Touval's approach is consistent with Kressel's (1972) notion that unequal rapport between mediator and disputants can sometimes contribute to successful conflict resolution. Unequal rapport, partiality, or bias refer to a mediator's being more closely allied or aligned with one party than with another (Pruitt 1983). The mediator may be aligned with one of the parties because of a personal affinity, and be thus perceived by all parties to the dispute. Touval (1985) maintained that disputants often accept this unequal rapport. (p. 595)

The research conducted by Wittmer et al; (1991) supported Touval's model of mediation, that is, one of a mediator aligned with one of the disputants. Their research also indicated that the perceived alignment of the mediator was important to the acceptance of suggested outcomes by the participants. Outcomes less favourable to a participant were accepted by that person, if the mediator were thought to be aligned with them. On the other hand, outcomes favourable to a participant were viewed with suspicion, if the mediator
were not thought, by that individual, to be aligned with them.

In addressing the issue of public or private resolution of sexual harassment complaints, Whittington (1990) writes "(i)s mediation any deterrent?" She explains:

Sexual harassment is sexual discrimination; a public crime which is not condoned in our society. By privatizing the process of rectification through mediation, the purpose of redressing the greater societal problem of sexual harassment is ignored. The compensation of one victim for one incident cannot compensate the society at large. In this was mediation adds to the power imbalance. (p. 13)

Gadlin (1991), on the other hand, argues that mediation might be preferred by a grievant in a sexual harassment case. Amongst other issues, he discusses the grievant's need to retain control of the complaint and to reduce stress on herself by keeping the complaint confidential, rather than going through an investigation. The emphasis of the grievant, as described by Gadlin, is on stopping the harassment and preventing it from happening to others.
Arsenault's (1990) article argues that mediation is a dangerous process for abused women. Citing the experience of women who have stayed in shelters, the author argues that mediation re-privatized domestic violence against women. Lack of effective intervention in the mediated context reinforces violence or implies its acceptability. She concludes that the assumptions of mediation do not apply in cases of violence.

Similar concerns regarding the process and outcome of mediation are raised by Richardson (1988). He cites Folberg (1983), as stating "(b)ecause mediation is conducted in private and because it is less bound by rules of procedure, substantive law and precedent, people will ask whether the process itself is fair and whether the terms of the mediated agreement are just" (p. 11). Auerbach (1983), cited in Davis and Salem (1984), raises another aspect of this concern, "whether by design or not, mediation was most enthusiastically prescribed for disadvantaged citizens who only recently had begun to litigate successfully to protect and extend their rights" (p. 43).

In examining the process of mediation, the Divorce and Family Mediation Research Study in Three Canadian Cities (1988) found:
92 percent of those interviewed believe that the mediator had been fair and impartial. Similarly, 80 percent felt that they had been given an opportunity to express their concerns and feelings about the separation or divorce. ... the vast majority of men (90 percent) and women (76 percent) were of the view that the sex of the mediator was not of concern and that then, and in retrospect, they had no particular preference. (p. 84) Feminist criticism of mediation in divorce cases was addressed in the Divorce and Family Mediation Research Study (1988) as follows:

mediation has not been criticized for its intended objectives but for the supposed unintended consequences which are products of the wider society: notably that women, oppressed and underprivileged within family structures, find themselves in the same position following the decision to end the marriage. These seemed to be concerns of a speculative nature which did not seem to be grounded empirically. Much the same seems to be true for concerns about the implications for the legal profession of the growth of divorce mediation. These seemed then, and now, concerns
based on specific instances rather than any systematic investigation of the nature of mediated settlements. (p. 180)

Summary

Although sexual harassment has been a part of women's reality throughout history, it is only in recent years that the Canadian Human Rights Code was amended to include sexual harassment as a form of sexual discrimination. Subsequently, employers were held responsible for the behaviours of their employees and mandated to implement policies and procedures against sexual harassment in the workplace.

In May, 1986, CAUT adopted policies against sexual harassment that included students. These policies recommended the use of mediation as one method of resolving sexual harassment complaints in universities.

The effects of sexual harassment have been compared to those of wife abuse. Guilt, shame and powerlessness are felt by women experiencing either form of abuse. The use of mediation has been criticized in both instances because it keeps the abuse private and puts the victim in a situation where she is obliged to confront her
CHAPTER

In case I need any communication between

me and you, I will be in the office. I shall, in all

cases, value your communication, and shall

value the time I shall spend in answering it.

Your affectionate Friend,

[Signature]

[Date]

[Address]
abuser, in order to seek redress. Since the perpetrator has more power than the victim, it is argued that the victim will usually fare less well than the perpetrator and this serves to re-victimize her.

The literature points out that the issues are complex and not easily resolved. The victim may not want a public airing of her complaint. Women initiate the majority of separations and divorces and those who go through a mediation process tend to do better than non-mediated settlements. Mediation processes can be flexible. "Shuttle" diplomacy can eliminate the need for face-to-face confrontation and the mediator can balance the power differential in favour of the complainant.
CHAPTER THREE: METHODOLOGY AND PROCEDURES

Introduction

This chapter presents the methods used in obtaining and analyzing data and the underlying philosophy that guided both the type of research and the methods selected. The purpose of the research was to explore the way(s) in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian universities and to try to determine whether mediation is an appropriate method of resolving these complaints. In September, 1990, I sent an outline of my proposal to the Ethics Committee of Brock University, where it was accepted by the Standing Sub-Committee on Research with Human Participants (see Appendix C). Since I proposed an exploratory study, I utilized several data-gathering methods, including questionnaires (see Appendix B) and interviews (see Appendix D), to assemble data which could provide insight and hopefully form a basis for further research in the area.
Methodological Assumptions

When I assumed the position of Sexual Harassment Advisor at Brock University in 1990, I read all that I could find on the topic of sexual harassment. I was particularly interested in methods of resolving complaints. The material was not extensive, since this is a relatively new area of research, as sexual harassment has only been legally recognized as an entity in the last decade. The literature did indicate, however, that mediation was thought by many to be an equitable and preferred method of resolving complaints. Several universities had mediation procedures in place. Mediation was favoured because it was confidential and relied on negotiation to effect a resolution "satisfactory to both parties".

These characteristics which made mediation so attractive were also the focus of strong criticism. Feminist critics of the use of mediation in sexual harassment complaints likened it to mediation in divorce cases in which wife abuse had been a factor. Their main argument was that mediation maintained and supported existing power imbalances in favour of the person
complained against (usually a male), did nothing to empower the complainant (usually a woman), and, by maintaining confidentiality around the complaint, also maintained the invisibility of the harassment and trivialized the seriousness of both the actions and their effects on the victim.

Social procedures tend to be shaped by ideological thinking. However, whenever ideologies are formed, there is always the danger that an important factor, that of meeting the needs of the individual, is lost. The reality of the impact of the process of resolution on the individual might be very different from the idealized outcome.

The individual experiences a subjective reality that might be very different for each of several people going through what appears to be an identical process. Their individual lives, experiences and needs are unique. In juxtaposition to this tremendous variety is the policy of the institution, formulated, whether consciously or not, to support an ideology, an intellectual "collective agreement" around political and social procedures.

Recent research on sexual harassment in the workplace has tended to focus on case studies of women
who have experienced sexual harassment, has profiled the perpetrators or has examined the need for an overall policy to deal with complaints. Some university studies have examined the perceived effectiveness of existing procedures by asking the university population whether or not they would use the complaint procedure.

All of these methods add to the general growth of knowledge in relation to sexual harassment. However, they are incomplete in that they examine discrete sections of the problem of sexual harassment in the workplace and, when pieced together, do not give the reality of going through a complaint process. They therefore do not address the issue of what this experience means to the complainant and where the complainant fits into the system.

The essential question that remains unanswered by all of the research is how satisfactory the system is to the complainant and whether the system is suited to the complainant or whether perhaps the complainant is moulded or pressured to conform to the system. Unless we answer this question, all arguments for the use of a specific method of resolution are intellectual ones and may be far removed from the needs of individual complainants.
There are several realities involved in the process of complaint resolution: the micro- in the form of the complainant or the respondent with her or his individual experiences and feelings, and the macro- in the form of institutional policy and procedures. In order to form a holistic view of the effectiveness of mediation, it was necessary for me to examine both the micro- and the macro- aspects of sexual harassment complaint resolution. I wanted to examine the "subjective" reality within the "objective" policy and examine whether the policy supported the needs of the individual. The latter would be achieved by looking for descriptions of the experiences of sexual harassment resolution and through this identifying the linkages across university structures that might serve to support a specific ideology.

Observing or questioning human subjects has become an accepted method of conducting research in the social sciences. There is a growing trend away from quantifying behaviours or subjecting humans to experimental methods, some of which had a dubious ethical basis. In recent years, the emphasis has been on "naming the experience", particularly in feminist research. As Lather (1991) states: "(f)eminism's grassroots, 'no more experts'
credo is premised on the sturdy sureness that, given enabling conditions, every woman has something important to say about the disjunctures in her own life and the means necessary for change" (p. xviii). The results have often been dramatic and resulted in changes in legislation, for example, the change in laws governing sexual harassment in Canada resulting, at least indirectly, from the publication of women's accounts of harassment in The Secret Oppression (Bachhouse, Cohen, 1978).

Because qualitative research tries to observe, deconstruct and then reinterpret patterns of human lives, the methodology used has to be flexible enough to allow expression of the multiple realities involved and to allow for the research design and theory to emerge from the data obtained, rather than be pre-constructed and rigid.

I chose naturalistic inquiry methodology, a form of qualitative research, as it meets my requirements in several important ways. Since this research is the examination of a process, rather than proving or disproving a hypothesis, naturalistic inquiry, because it is grounded in the data, allows for the theory to emerge from the information obtained.
Naturalistic inquiry grew from what is known as qualitative research which was devised by Piaget as a method of studying human development (Best & Kahn, 1989). Piaget built a logic of operations on what he observed as children played. The first subjects were his own children, in their own home. This method differed from the usual scientific method in several ways. First of all, it was neither necessary, nor advisable, to begin with a hypothesis. It was, however, necessary to determine the boundaries of the research question and what the focus would be. In this case, the effects of the process of mediation are both the boundary and the focus.

Questionnaires and interviews are both forms of qualitative research where the subjects are asked to respond to questions either verbally or in writing. Questionnaires have advantages and disadvantages. It is possible to survey large populations by questionnaires; however, the rate of return may be low and the information elicited may be limited in its application. The results obtained might, however, indicate trends or areas for further investigation.

Interviews allow a deeper exploration of questions. They have the advantage of the subject being able to
expand on specific questions or areas of concern. If the interview is conducted skilfully, the subjects will feel comfortable enough to voice their true feelings on the topics covered. In this process, the interviewer engages in what Lather (1991) terms "reciprocity" where "the researcher moves from the status of a stranger to friend and thus is able to gather personal knowledge more easily" (p. 57). The researcher positions herself as a participant in the research, revealing her thoughts and biases on the issue; not as an "unbiased," external observer.

In this democratized process of enquiry, meaning is constructed from the data obtained. The researcher does not speak for the subjects, but participates in the subjects' search for self-understanding by allowing the subjects to speak on their own behalf and focusing on the subjects' understanding of their own condition. This differs from more traditional forms of research where the data are "fitted" into an existing theoretical framework, ignoring the subjective realities of the participants when they do not conform to, or support, the theory. Lather (1991) warns that this is a trap even feminist researchers fall into and "(i)n the name of emancipation, researchers impose meanings on situations
rather than constructing meaning through negotiation with research participants" (p. 59). Self-understanding allows participants to move towards self-determination and provides a model for others travelling a similar path. As such, it is advocacy, rather than "objective" research, with all the strengths and limitations of such research.

Since it is important to have an accurate understanding of the subjects' perception of their condition, it is necessary to go back to some subjects and have them confirm the verity of the interpretation of their interview conversations. This process, or "member check" strengthens the reliability of the inquiry approach, which might otherwise be viewed as the researchers "picking and choosing" to mould the results to a pre-determined conclusion (Lincoln, Guba, 1985).

Methodology

I began by surveying the literature related to both sexual harassment and mediation by examining the history of mediation as conflict management and by reading the current feminist critique of its application to sexual harassment complaints. More recent research has disputed


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[Additional information or questions related to the image content can be added here if necessary.]
some of these feminist beliefs and they have been added to the literature survey.

Since research on sexual harassment began relatively recently, most of the focus has been on identifying the extent of the problem and the effects on the victim. There were no questionnaires or surveys that I could find that examined the complaint resolution process and could be adapted for my purpose. I had to create my own questionnaire. To do this, I examined several types of questionnaires for format and content. Since I wanted statistical, as well as descriptive, information, I used several different methods of questioning. The questionnaire (described more fully below), employed closed form questions, ranking, Likert-type scales and open form questions because these were the most commonly used formats on the questionnaires I researched and were the most efficient ways of acquiring a broad range of information.

As described above, it was neither practical nor necessary to try to interview the disputing participants in mediation. I did have access to the Advisors and Mediators who were a vital part of the process and could provide key information. The research population included those involved with mediation and sexual
harassment at all Canadian universities. Since there are only 54 universities, this seemed feasible and those who answered the survey would be a self-selected sample.

In October, 1990, I sent a letter to the Sexual Harassment Officer or Advisor of each Canadian university (see Appendix E) requesting a copy of their policies and procedures on sexual harassment and the name(s) of anyone designated mediator in sexual harassment complaints. Because my total population was relatively small, I decided to send pilot questionnaires to a few smaller, specialized universities and several colleges. I sent the pilot questionnaire, plus a covering letter to eleven institutions in October, 1990 (Appendix F). The piloting was to be a check for content and face validity.

Perhaps because the institutions were small and serving specialty needs, they were less likely to have a policy and procedures dealing with sexual harassment, or one person designated to deal with complaints. Whatever the reason, the return on both requests was disappointing, particularly with regard to the questionnaire. Those who did reply did not return a completed questionnaire, nor did they comment on the way
it was structured. I was confronted with the dilemma of deciding whether to try to retrieve the pilot questionnaires or keep on schedule and use the questionnaire as it was. I decided to try to keep to my proposed schedule and solicit comments on the questionnaire at a later date.

In November, 1990, a questionnaire was sent, together with a covering letter (see Appendix G), to 46 Canadian universities not included in the pilot survey. The responses to my initial letter of October, 1991, had informed me that several universities do not have mediation or that mediation is performed by the Sexual Harassment Advisor, or equivalent. The covering letter that went out with the questionnaire acknowledged this and requested that the questionnaire be completed by "the most appropriate person." In the case of French-speaking universities, the covering letter also apologized for the lack of a French translation of the questionnaire. My imperfect knowledge of French and a lack of funding for a professional translator meant that all correspondence on my part had to be in English.

As stated above, the questionnaire (Appendix B) was designed to elicit both statistical and anecdotal
information. The statistical information was requested in both a simple count, for example:

2. How many times was mediation utilized? __________

and rank ordering, for example:

5. PLEASE RANK IN ORDER OF TIMES UTILIZED AT YOUR UNIVERSITY THE FOLLOWING OUTCOMES OF MEDIATION:

A. Verbal apology from person complained against and an undertaking to complainant not to repeat the behaviour

B. Written apology from person complained against and a written undertaking not to repeat the behaviour(s)

C. A written report of the complaint and mediation outcome to be kept on file for a specified time period

D. Limitation of contact with the complainant by the person complained against for a specified period of time

E. An agreement to a specific course of action to be taken by the person complained against within a specified time period (e.g., attending a workshop on sexual harassment)

F. OTHER PLEASE SPECIFY________________________________________________________

Utilizing more than one method of obtaining statistical information allowed me to discover not only the frequency and outcome of complaints of sexual harassment but also the mode of outcome most likely to have been used and the relative frequency of use of specific methods of complaint resolution.
Anecdotal information was also solicited in different ways. In order to elicit responses specific to the process and outcome of mediation, I asked:

(PLEASE CIRCLE THE MOST APPROPRIATE)

6. In general, the COMPLAINANT expressed:

A. Positive, neutral, negative comments regarding the PROCESS of mediation

B. Positive, neutral, negative comments regarding the OUTCOME of mediation

Question 7 asked the same questions about the person complained against. It might be argued that these comprise statistical, rather than anecdotal, information. I believe, however, that the information is more likely to be given on the basis of the respondent's informal understanding, rather than an actual count.

I wanted to obtain the questionnaire respondents' feelings about mediation as a form of complaint resolution, so I asked them to rank order how they rated mediation as a successful method of resolving sexual harassment complaints in their university, using a Likert-type scale with 5 = very good and 1 = poor. Finally, I asked respondents to elaborate on whether they felt mediation was the most satisfactory way of
dealing with sexual harassment complaints for the complainant, and if not what would be. The same type of question was asked about mediation of sexual harassment complaints from the university perspective. I ended the questionnaire by asking what, if anything, the respondents would like to see changed about the procedures their university used to deal with sexual harassment complaints.

Again, the return was low, only seven of the forty-six universities solicited returned a completed questionnaire. Ten universities sent letters stating that they had no policy, no mediation or no Advisor or equivalent. I decided to send a second copy of the questionnaire to the universities that had not responded, and to go ahead with the interviewing at the CAASHHE Conference. In order to provide a sample population to interview, a random sample of mediators or alternatives was chosen by assigning a number to each university, placing the numbers in a container, and selecting fifteen numbers at random from the total.

My original intent had been to interview ten individuals from the random sample of fifteen at the November, 1990 CAASHHE Conference, and five by telephone after the Conference. This was not possible, however,
due to the tight scheduling of the Conference and the interest generated by sessions which meant that coffee and lunch periods were shortened, making contact very difficult. An additional problem was that of the difficulty in making telephone contact with advisors and mediators who were often in a part-time position, with more than one responsibility to their university and also often in a different time zone. Because of these constraints, fourteen of the fifteen interviews took place during the 1990 and 1991 CAASHHE Conferences in Toronto and Montreal. One interview took place in a university. Five of the interviews were tape-recorded, with permission, and in ten I took written notes.

I felt that it was important to find out how the information I had received on my questionnaire returns compared to the verbal information from the interviews. I also wanted to give the interviewees an opportunity to elaborate on areas that they felt to be important. Because of this, initial questions were similar in all interviews; however, later questions were sometimes different and developed from the initial responses. Sample questions used at the interview were "How do you view mediation as a method of dealing with sexual harassment complaints in universities" and "what do you
feel is the best method of complaint resolution for the complainant? ... for the university?" (See Appendix D). My perspective was disclosed as I discussed my biases and experiences with those I interviewed.

Because the return on the questionnaires was low, a copy of the questionnaire was re-submitted to each university that had not responded to the original, together with a new covering letter which explained the need for questionnaires to be completed and returned, even if mediation was not a part of the complaint process (Appendix H). A second mailing of pilot questionnaires was also sent (Appendix F). Thirteen completed questionnaires were returned, giving a total of twenty. One pilot questionnaire was returned, completed but without comment on the questionnaire format. Fifteen other universities had now responded that they either had no policy or no available statistics and therefore they would not be completing the questionnaire. Since this made a total of 35 responses, I felt it was futile to send out more questionnaires.

Gathering this information has been time-consuming and difficult, not through any reluctance to discuss issues on the part of advisors or mediators but because
of the lack of available statistics or notes on file in many universities, making completing of some parts of the questionnaire difficult or impossible, or the lack of a single individual at a university to whom it was possible to address questions. The data have been gathered over a period of a year. However, the controversy over the use of mediation continues and I feel that the research has not been hindered by this relatively long time frame. The more recent data support and confirm information I was receiving in the initial data.
CHAPTER FOUR: FINDINGS

The purpose of this study is to achieve a better understanding of the mediation process as it is used to resolve sexual harassment complaints in Canadian universities. This chapter will be divided under the following headings: Introduction, Descriptive Statistics, Arguments against Mediation, Support for Mediation, Interpretation, Summary.

In this Chapter, *respondent* will refer to the person who completed the questionnaire and *person complained about* will refer to a sexual harassment respondent.

Introduction

Letters and questionnaires were sent to 46 Canadian universities. Thirty-four universities responded, twenty-two by completed questionnaire, and twelve by letter. The twelve universities that responded by letter gave reasons for not completing their questionnaire as follows: Eight universities reported that they did not have a policy in effect at the time the questionnaire was investigating
(January 1 - December 31, 1989). Two reported that they did not have a Sexual Harassment Advisor or Officer in place at that time. One university reported that mediation was not a part of their procedures. One mediator reported that they had not mediated any complaints at their university. They did not indicate whether they had passed the questionnaire on to any other mediators; however, the university did not respond in any other manner.

Twenty-two questionnaires were completed and returned. Of these, five reported no statistics available for the time under survey because their position was a new one and statistics were not available on complaints dealt with before their appointment. Two universities reported that no complaints were made during the time surveyed. Two other universities reported statistics on complaints but reported that mediation had not been part of the resolution process at that time. One of the two universities has since written mediation into their procedures. All of these universities had other information or comments about mediation in their questionnaire. These comments are included in the support for, and arguments against,
and other remaining costs. This is a determining factor in the outcome of the project. The costs associated with the project need to be carefully calculated to ensure that the project is financially feasible.

Similarly, the project's schedule is crucial. A well-planned schedule ensures that the project is completed on time and within budget. It is important to allocate sufficient time for each phase of the project to allow for any unforeseen complications.

In conclusion, the success of any project depends on a combination of factors. These include cost, schedule, risk management, and customer satisfaction. By carefully considering these factors and addressing any potential issues, the project team can increase the likelihood of a successful outcome.
mediation sections. The thirteen remaining universities gave statistics on both complaints and mediation.

The numerical information requested on the questionnaire was used to generate a composite picture of the role of mediation in resolving sexual harassment complaints. They are, therefore, mostly presented in raw numbers.

Questionnaire respondents and interview subjects were asked to elaborate on whether or not they felt mediation was the most satisfactory way of resolving sexual harassment complaints for the complainant and/or for the university. Eighteen questionnaire respondents elaborated. Twelve were against, and six were in favour of using mediation as an informal method of resolving complaints. Of the fifteen subjects interviewed, six were against and nine were in favour of mediation. Some of the subjects interviewed had also returned completed questionnaires. All of those interviewed were concerned with the definition of mediation as they used it.

For purposes of clarity and brevity, the qualitative material from both the interviews and the questionnaires has been integrated and information given in French has been translated into English.
Descriptive Statistics

Thirteen universities gave information on both sexual harassment complaints received and those offered to mediation. In general, the number of complaints received, shown in Table 1, was in positive correlation to the size of the university.

Table 1
Mediation Statistics January 1 - December 31 1989

<table>
<thead>
<tr>
<th>UNIVERSITIES REPORTING</th>
<th>COMPLAINTS RECEIVED</th>
<th>COMPLAINTS MEDIATED</th>
<th>MEDIATED RESOLUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>N = 13</td>
<td>499 (MEAN 38.4)</td>
<td>55 (11%)</td>
<td>37 (67.3%)</td>
</tr>
</tbody>
</table>

Table 1 indicates that mediation is not used very often (11%); however, when it is used, it has a better than even chance of effecting a resolution (67%).

Eleven of the responding universities reported that they used mediation as an informal, voluntary method of complaint resolution, only one university offered mediation as part of their formal complaint procedure. One other university required mediation as an
intermediate step before formal proceedings could be started. The respondent for this university expressed some concerns over the potential for early legal involvement that such a system generates.

Sixteen universities responded to the question "Which of the following outcomes of mediation are possible at your University?" in a way that indicated that most of the given outcomes were possible. The responses indicated that, whatever else was agreed on, a written, rather than verbal apology was preferred and a written report of the complaint and mediation outcome was usually kept on file for a specified length of time.

Table 2 gives a breakdown of the responses to Question 5, indicating how each outcome was ranked by the respondents. Eleven universities ranked outcomes by assigning a value of 1 to 5 to each possible outcome given. A value was then assigned according to ranking order, (i.e., the outcome that was ranked as most frequent was assigned a value of 5, the second most frequent a value of 4, and so on). These values applied to outcomes A,B,C,D and E only. When two outcomes were ranked with the same number by a university, the same value was given to each outcome. Raw scores for ranking are indicated in brackets ().
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Table 2 *Ranked Mediation Outcomes*

<table>
<thead>
<tr>
<th>POSSIBLE OUTCOMES OF MEDIATION</th>
<th>YES</th>
<th>NO</th>
<th>RANKED OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Verbal apology from person complained against and an undertaking to the complainant not to repeat the behaviour(s)</td>
<td>12</td>
<td>3</td>
<td>4th (30)</td>
</tr>
<tr>
<td>B. Written apology from person complained against and a written undertaking not to repeat the behaviour(s)</td>
<td>16</td>
<td>0</td>
<td>1st (43)</td>
</tr>
<tr>
<td>C. A written report of the complaint and mediation outcome to be kept on file for a specified time period</td>
<td>15</td>
<td>0</td>
<td>2nd (40)</td>
</tr>
<tr>
<td>D. Limitation of contact with the complainant by the person complained against for a specified time period</td>
<td>15</td>
<td>1</td>
<td>3rd (34)</td>
</tr>
<tr>
<td>E. An agreement to a specific course of action to be taken by the person complained against within a specified time period (e.g., attending a workshop on sexual harassment)</td>
<td>14</td>
<td>2</td>
<td>5th (19)</td>
</tr>
</tbody>
</table>
There were ten responses to the question of what other outcomes of mediation are possible (4.F and 5.F). Seven wrote that any outcome was possible, as long as both parties agreed. The outcome would, of course, be limited by what it was possible for the parties to grant. As one respondent wrote:

I think almost anything could be possible, ranging from agreed on behaviours to agreed on actions which could be interpreted as penalty or some institutional remedies like re-grading papers. Other institutional remedies which lie outside of the power of the complainant to grant, are not possible.

Another respondent wrote:
Counselling, not meeting off campus, stalling of formal complaint - holding of complaint for specified period of time or until and if another new complaint comes forward.

A further respondent described some of the agreements that had been reached as an "agreement of respondent to voluntarily leave residence, agreement to no retaliation, agreement to confidentiality and
agreement to other specified behaviours (e.g., no name-calling, spreading rumours etc.)"

In Questions 6 and 7, respondents were asked to circle whether the complainant and the person complained against expressed positive, neutral, negative comments about the process and outcome of mediation. No elaboration of these terms was either given or asked for, since the goal was a general evaluation, rather than specific comments. In general, the responses were similar for both the complainant and the person complained against, with the main response being favourable to both the process and outcome of mediation. Table 3 details these results.

Table 3
Responses to Mediation
*Person complained against

<table>
<thead>
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<th>PROCESS</th>
<th>OUTCOME</th>
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<td></td>
<td>+ve</td>
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<tr>
<td>COMPLAINANT</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>RESPONDENT*</td>
<td>6</td>
<td>2</td>
</tr>
</tbody>
</table>
Questionnaire respondents indicated that they found mediation a slightly less than satisfactory method of resolving sexual harassment complaints at their university (Question 8). However, those universities that had successfully used mediation were more likely to find it a satisfactory method of complaint resolution. Rating was from 1 POOR up to 5 VERY GOOD. The mean response was 2.8, with 2 indicating fairly satisfactory and 3 satisfactory. The universities that had mediated complaints successfully gave a mean score of 3.3, slightly above the general mean. Those universities that had not resolved complaints by mediation, gave a mean score of 2.6, slightly below the general mean.

Questionnaire respondents were almost equally divided in their evaluation of mediation as the most satisfactory way of dealing with sexual harassment complaints for the complainant (Question 9). Eight responded no, six yes, five sometimes and three gave no indication. Of those universities that had successfully mediated complaints, three felt it was the most satisfactory method, two that it was not, and two stated that it depends on the situation. Successful mediation was not, therefore, a predictor of respondent satisfaction with this method of complaint resolution.
Seven respondents indicated that mediation was the most satisfactory way of resolving sexual harassment complaints for the university; seven wrote no, one "maybe" and one "it depends" (Question 10). Successful mediation did not predict a response indicating that mediation was the most satisfactory way of dealing with sexual harassment complaints for the university, either. Of those universities that had successfully mediated complaints, only one responded that it was the most satisfactory way of dealing with sexual harassment complaints for the university.

Only three universities responded to Question 13 which asked for comments. The comments given were, however, an excellent summary of the tone of the questionnaires, and are included in full:

1. more education of the Univ. community needed about mediation ... sounds like too daunting a process to the initiating party who is usually too stressed out to decide on a process s/he knows little about
2. need for advocates (or advocacy services) of/for both parties. (not lawyers)
3. mandatory education programs sanctioned jointly by unions/admin.

We are currently reviewing our policy with the goal of making it more comprehensive, offering greater flexibility in options for resolving the problems. We hope to make more explicit what range of disciplinary action could occur, to include a strong statement of endorsement by the new president and to include a greater range of unacceptable behaviors in the definition of sexual harassment which would recognize harassment based on sexual orientation as unacceptable.

Nothings perfect - develop your ethics first. Mine are based on a combination of CARE and JUSTICE. Don't dehumanize process.

Arguments against Mediation

Most of the arguments given against mediation can be divided into two main categories: the problems associated with power imbalance; and the perception of shared responsibility that seems associated with mediation. The power imbalance is seen to lead not only
to problems with the process of mediation but also with possible outcomes. The perception of shared responsibility for the harassment is felt to hide the true nature of sexual harassment and to maintain the status quo of our patriarchal society. Several universities mentioned that complainants did not frequently choose mediation as an option, they preferred to "either act themselves (e.g., write a letter), or have someone else act (e.g., supervisory discipline").

As one respondent stated, "(a) warning from somebody in authority ... seems to suit people more than a mediated settlement." One of the main reasons given for this is the inequality of the participants. As one respondent commented "so far, it seems that role disparity is too great ... and involvement of positional unions too strong ... for mediation to be successful. Sometimes I think that conciliation might be better." Respondents felt that there is "an inherent gender imbalance" in our society that makes for "power games" between males and females, with females usually losing. One respondent felt that it is because of this inherent power differential that almost always exists in cases of sexual harassment, even in the more subtle cases of peer/peer harassment that
don't lend themselves to mediation because people tend to agree to things for the wrong reasons or because of the same reasons they seemingly went along with the harassment in the first place.

One university wrote that it was not possible to separate dealing with sexual complaints from the whole gender climate in universities and felt that the only thing that would be most satisfactory was "a very changed climate where harassers would be suspect, not victims and everyone was sensitive to and working to eliminate sexually harassing behaviours." The reality presented, however, is that the power differential makes mediation difficult, since the participants are not meeting on an equal basis. Adding to the inequality is the perception that "most of the women ... wouldn't do anything if it was going to create trouble. They don't want to make trouble, to be mean. We're dealing with women who are trained to be nice and look after everyone but themselves." This reluctance to make trouble and to make the problem visible was felt to maintain the status quo "specific (SH) and general (Patriarchy)." One responded expressed it:

Well, it's in the best interests of a patriarchal society, where essentially anyone who has the power
fights very hard to keep the power and part of the power imbalance is to obtain sexual favours or generally just to sexually abuse, even in a poisoned environment way, by humiliating, degrading by sexism, that kind of thing. ... to be able to do that keeps, gives, certain people, typically men, power. They want to keep that power, so, if we don't say there's a problem, if we keep it all hidden, there's a better chance that they can keep that power.

Understanding and dealing with this power differential were felt to be crucial to successful mediation. As one respondent wrote "(mediation) works only in very specific types of cases and only if the mediators are specially trained to do sexual harassment med(iation) (i.e., understand inequality of power issues)." Some respondents expressed doubt that the power differential could ever be eliminated, even by highly trained mediators, as "we don't know enough about (mediation) and balancing out the power." The situation was felt to be further confused in the cases where the Advisor acts as mediator. The complainant was reported to react negatively to this apparent conflict of role, where the Advisor acted first as advocate then as
"neutral" mediator to the complainant. One respondent reported:

(t)he comment that was made to me was that "I didn't find that you were on my side" and the assumption there was brought about by the initial behaviour when we received the complaint and initially supported the complainant so there was a conflict of role.

The belief that the complainant and person complained against would have to meet during mediation was cause for concern. One respondent stated that "the problems that I see with mediation specifically within the informal context are that it implies sitting down across the table one from the other ... typically in its definition it implies that." As another respondent wrote, "No victim wants to come face to face with his/her harasser," and a third "the extent that we can keep them (complainants) anonymous is helpful. As soon as we can't, I worry about what repercussions there will be for them." Because of these concerns, some respondents questioned whether mediation had any role to play in resolving sexual harassment complaints. Other respondents felt that mediation could be used, but very rarely. This use should be "case-specific" and used
"only in very particular circumstances." As one respondent wrote:

Complainant needs to understand the limitations of mediation - cases that have elements of persistent abusive verbal/physical behavior may not be appropriate for mediation. Complainant needs to choose - mediation often a 1st step - if it fails formal process must be next step or choice.

There were thought to be situations in which mediation would never be appropriate; for example, mediation should not be used:

(i)f the complainant feels that the harassment is likely to escalate; if s/he is frightened or feels threatened; if the incidents complained of involve assault, malice, or harassment by someone who is psychiatrically disturbed.

The tremendous strain that the complainant undergoes was recognized by several respondents. As one stated, "(o)ften, the demands put upon the complainant are felt, by the complainant, to be overwhelming, inappropriate. The complainant has expended tremendous energy simply in the process of making a complaint." This stress was felt to the extent that "(t)his means often she can't sit in the same room as this person or
thinks this is really serious and should go to a formal hearing." Mediation, far from being regarded as a "neutral" or "safe" procedure, was regarded by some as a very serious step, as the following respondent suggests:

It seems that complainants feel mediation bears the same risks as proceeding with a formal hearing in the sense of possible retaliation, destroying work situation even more than it is with harassment. They still feel they are in a situation of confronting the harasser and potentially antagonizing him more.

The move to a formal resolution of the complaint was seen by some to be more satisfactory, as it gives some protection to the complainant and, by its visibility, creates a formal record of the complaint. Mediation, on the other hand, maintains the confidentiality of the complaint but it is possible that "we end up with an informal memory but no formal institutional memory." In this way, mediation is thought to make the issues invisible. One respondent felt that "(m)aking complaints public and involving the system might make for a faster climate change and serve the complainant's interests more."
These are obviously difficult issues to deal with, however, and the frustration felt by many was summarized, "I've always really believed that you should do what the client (or in this case, the complainant), wants and is comfortable with ... I'll have to come down in terms of recognizing the confidentiality of the complainant, recognizing however how imperfect that is, and how it really does disempower the victim." This lack of empowerment of the victim was felt to have the potential of resulting in agreements that might be inappropriate and even punitive for the victim. There was also a concern expressed that mediation might hide ongoing, repeat problems or complaints that "should be brought to the attention of senior officials so that something can be done to eliminate the problem." One university felt that legal advisors should not be a part of the mediation process, partly because "an adversarial relationship is established which can escalate the complaint. Moreover, the university is not protected from being joined as a respondent in other proceedings if its own procedures for handling complaints are inadequate."

There were several objections to the fact that both victim and perpetrator were involved in the resolution
process. As one respondent stated "if you say that sexual harassment is wrong and against the Law, then how come both parties have to arrive at a solution?" Some respondents expressed the feeling that mediation generally presupposes some kind of joint responsibility for resolution of the conflict. It was felt that this had the effect of "saying (the victim was) responsible in some way for what happened. Complainants get the message they are somehow to blame." Concern was expressed that the perception of equal responsibility that might accompany mediation could add to the stress experienced by the complainant. As one university expressed it:

The complainant is treated as an equal party to the problem and may without intention be seen as equally responsible for the problem if the mediator is not sensitive to the power differential between the two parties. Mediation is often time consuming, therefore the complainant must wait a long time before there is any closure or action taken as part of the solution. Often the complainant is living with a lot of stress while involved in this process which adversely affects his/her course of studies.
One respondent summed up: "once you see mediation as problem-solving on those assumptions (no blame or shared blame), then I really don't see that it's an appropriate strategy."

The outcomes of mediation and types of solutions available through mediation were other areas of concern. One university reported:

we have not used that term mediation and we didn't use it specifically because we felt that the word has connotations that we didn't agree with - connotations that it is only successful if you actually reached an agreement and we didn't want that to be built into the conception.

The emphasis on change through education was reported to often leave the complainant unhappy. Although it "leaves the perpetrator ... being less angry and hostile and open to education and attitude change ... if you weigh that in terms of power imbalance for the victim, then that leaves that as still not a desirable." The complainant was found to have a "dislike of progressive discipline - prefers dismissal." It was felt that the outcome is often "not what (the complainant) hopes will happen (education vs. punishment)", perhaps inevitably, because "sometimes the
remedy isn't something that is in the power of the harasser to give." One respondent explained that this is "mostly because the kind of solution they want will be one that will have to come out of a formal hearing such as suspension or preferably, really, dismissal." Even when mediation was felt to be successful, there were fears expressed that the long-term outcome might not be favourable to the complainant. These fears were expressed by one respondent:

the complainants felt that it was appropriate, and a way to deal with the harasser. However, they were still uncomfortable, and they were not satisfied with the level of assurance that the harasser would keep up to their end of the agreement. It appears as if the complaint was more resolved from the harasser's viewpoint.

As another stated "(w)e end up, therefore with a lose/lose proposition... The complainant thinks something much more serious should have been done, the respondent thinks it was taken much too seriously." Because of these concerns, it was felt that mediation was "more advantageous to administration than to the complainant." Even then, it not a total win because "(the) university might win because it takes a middle
road - loses because of high cost of resolving complaints ... if the penalties were harsh enough, it's a net gain for the university and the complainant."

Arguments for Mediation

Those universities that responded positively to mediation emphasized the flexibility of the mediation process they used. Several respondents felt that mediation could be the way of resolving conflict, provided that it was a flexible process. This flexibility of process was felt by some respondents to be a significant factor in resolving the power imbalance between the complainant and the person complained against. One respondent felt that "the idea that it's impossible to even out the power imbalance etc. comes partly from the early training of mediators and ... experiences with mediation research, looking at mediation from a feminist point of view." This respondent felt that the "feminist" and "reformist" views of mediation were "two ends of a continuum," with the feminist perspective "not taking into account the kinds of changes to that more structured mediation that we learned at the beginning than the way it's done now."
Changes to the process of mediation were thought by this respondent to be an inevitable and healthy response to changed needs and perspective. This was expressed:

Yes, I do (think mediation is a viable and appropriated means of resolving sexual harassment complaints). I think it is easier to apply it in areas where it was, shall we say, more designed to be used ... labour disputes, community disputes. But when it went in community disputes, I think there were changes made there as well. Talk to anyone who has been involved in divorce mediation and they would say we have changed. What we learned was to accommodate more to the needs of the parties and to the overall needs of the situation (e.g., child custody), that we're dealing with. I think that is what has been happening ... in the sexual harassment area since 1982. In 1982, the kinds of mediation patterns that we learned were much more structured and are very difficult to apply to a sexual harassment situation. I don't think they take into account the enormous power differences that are going to exist, usually between a man and a woman, sometimes not ... but enormous power differential between student and prof. I think
inherently enormous power differentials between most men and most women.

One of the most consistent features of successful mediation was that the complainant and accused were not seen together and a form of "shuttle" mediation was practiced, thus avoiding the power differential inherent to a face-to-face discussion. This, again, represents a change from those early days when "we learned in 1984, 'you never caucus, you'll get one of these parties suspicious and they'll wonder why.'"

There was an emphasis on redefining the goals of mediation and tailoring it, not just for sexual harassment disputes as opposed to divorce, labour etc. disputes, but "tailoring it for a particular sexual harassment dispute." In order to do this, the mediator "need(s) flexibility in dealing with the complainant." and should "try to find a solution that makes the complainant happy and gives the perpetrator some dignity, so that he can learn and change behaviours, not be angry and resistant." This perspective on the accused was elaborated on by another respondent who explained mediation as "shuttle diplomacy, getting to know the perpetrator, establishing some standards of trust, seeing perpetrators as victims also, or in need of
education - victims of their own upbringing." Another respondent, who was, in general, opposed to mediation expressed it:

I still think you have to consider context. There are some people, God only knows where they've been, they just haven't picked up on the fact that things have changed and that those things are, by a lot of people's standards, not acceptable. But I don't think that those things really justify public floggings of people or very media-coverage kinds of stuff and I don't think that benefits anybody. I think that we have to accept there's going to be a backlash and I don't see it as being useful to create a backlash, and it's hard to say this because of the perception that you want to trivialize it and, no, I don't want to trivialize it, but I do recognize a continuum over this as other things.

It was felt that for mediation to be successful, there was a need for confidentiality on the part of those involved in the complaint and for both parties to be committed to change or "there is a desire by both parties to find a compromise or resolution to the problem in an informal manner" and for the main goal to
be relief from the harassment and "an acknowledgement on part of the respondent that he is now aware how his behavior was offensive". Mediation was viewed as a process that allows the accused to change behaviours without going through a formal procedure, effecting change through education and reducing the possible loss of employees from the university.

Mediation was felt to be beneficial to the complainant also, due to the less intimidating nature of mediation over a formal complaint procedure. This is particularly true for students, who make the most complaints. As one respondent wrote, "(f)ormal hearings and processes are stressful, time consuming and almost unworkable. They should be a last resort."

This move to rethinking the mediation process and outcome was expressed by another respondent "I have been expanding the way I explain mediation recently, to include the possibility of getting the person to agree to a penalty ... theoretically it seems possible." Another stated that they were "trying to introduce a process called neutral interveners." It was explained that the neutral intervener "someone, a professional outside of the university, hears both sides of the story and, based on the facts and the wishes of the victim, a
decision is made as to how they settle the conflict."
This enables a degree of confidentiality to be
maintained and "at the same time the victim feels still
in control of the situation." The negative side of the
proposal is that

(m)ost faculty, however, did not prefer this
process for obvious reasons - (the ability to
control, intimidate etc. in mediation) - but
through research the victims all preferred the new
proposal over that of mediation.

In the "reformed" view of mediation expressed by
these respondents, the mediator was viewed as "not
necessarily neutral," and it was felt that mediator
training should emphasise this perspective. One
respondent stated:

I think mediators have to be trained, practice
mediation tailored to take into account the (power)
differences that I've identified. You just can't go
into mediation in a structured way. ... You need to
talk about power differences and mediate in
male/female pairs. I would always mediate in these
pairs where you know the two parties were going to
identify, more or less, with one person or another
...I think you have to think about these natural
kinds of alignments and maybe not fight them quite so much by having "pure" neutral - because you can have the purest neutrals and people are going to think that so and so is probably going to be more sympathetic to me.

None of the respondents felt that mediation should be compulsory. Several suggestions were given as to where it should fit into the complaint resolution process. One respondent felt that "mediation should be used as a first step in a process of resolving a conflict and not as the way of resolving it." Another stated:

I think the most appropriate strategy is to give complainants the option of going for simple mediation - where they perceive the harassment as largely a product of insensitivity and crassness - or going for the activation of a disciplinary procedure, which could involve some 3rd party mediation but is conceived within a more formal framework.

Several respondents expressed the view: "What is needed is several approaches - no one way is best. Some require confrontation others mediation, others formal hearing. Too complex for one approach."
...
It was felt that, if mediation were successful, the problem was resolved to the satisfaction of the parties involved and "the university also knows and can monitor the situation." It was also felt that a skilled mediator would save the university time and money and keep the situations "out of public view where they might discredit the university."

There was an acknowledgement that mediation has moved away from its traditional mode and now resembles more victim/perpetrator conciliation. It was suggested that we "may need a different name - conciliation reflecting that there's been some wrong done here and we're trying to redress it."

A different approach was "the situation where the person doing the investigation can come to some kind of resolution of guilt without having to have the complainant having to face the accused and having to go through it all over again and not have the burden of proof be with the complainant." Another respondent went even further and stated "I feel that a complainant-driven system is not the best method of going forward because of the anonymity, the fears and the energy it takes ... once the complaint is known, then the case should be taken over by the university administration
and they can simply be called as a witness." However, there was a recognition that making the university take more of the burden of complaints "may be impossible without making complainant passive actor in case."

Another respondent commented:

I'm worried about a system where we just let the Administrators deal with (complaints), because I'm not sure they have the sense of what would hurt the complainants. But I'm tending more in that direction.

Finally, as one respondent wrote "(t)he effectiveness of any particular procedure will depend hugely on the definitions of sexual harassment used in the policy."

Interpretation of Findings

The results of this research reflect, not surprisingly, the current controversy around the use of mediation, both in universities for sexual harassment complaints, and in other areas of dispute resolution, particularly divorce cases. Instead of a clear "yes" or "no" to mediation, my research indicates that "it depends." Mediation is a process that can be utilized to
resolve some, but not all, complaints of sexual harassment and appears to suit some, but not all complainants. Although this may appear to be a weak conclusion, the data do not allow me to come down strongly on one side or the other. I believe, however, that this conclusion is significant because it refutes those who argue that mediation has no place in sexual harassment complaint resolution. Mediation may not be appropriate for all complaints, but, according to those surveyed, in the small percent of cases (11%) where it is utilized, it has a reasonable chance of being successful (67%). Through this research, I have learned to be more critical of those who argue against the use of mediation under any circumstances. By not allowing the opportunity for mediation, they are taking the power of choice away from the complainant. Power imbalance and the dilemma of public versus private methods of complaint resolution have been recurring themes of those who oppose the use of mediation to resolve sexual harassment complaints, and in divorce cases where there has been spousal abuse. In addressing these issues, it is important, if not vital, that the voice of the complainant, or, in divorce cases, the wife, be heard; no matter how faint their voice, individuals must be
given a choice as to how they resolve their problem. Perhaps it is time to end the debate over whether mediation should be used to resolve sexual harassment complaints and focus on when and how it can best be utilized.

In the questionnaires, both complainants and the persons complained against were reported to have expressed more favourable than unfavourable comments about both the process and outcome of mediation. The person who most often expressed negative feelings towards mediation was the questionnaire respondent, who was usually the Sexual Harassment Officer or Advisor for the university. A frequently expressed concern was that of the power imbalance inherent in sexual harassment cases, and, because this appears to be a key argument against the use of mediation in sexual harassment cases, I would like to address it at some length.

Several researchers have compared sexual harassment mediation to mediation in divorce situations (see Chapter Two). The emphasis has been on the power imbalance inherent in spousal abuse situations, making them unsuitable to mediation. This is certainly a view few would oppose. However, as with sexual harassment complaints, there is more than one cause for divorce.
Authors such as Shaffer (1988) and Arsenault (1990) offer arguments against divorce mediation based exclusively on spousal abuse, or the potential for abuse within the relationship. There are many reasons why couples decide to separate and divorce and to focus only on abuse is, to my mind, to misrepresent the total picture, no matter how widespread the practice is thought to be.

Some feminists argue that there is an inherent power imbalance in favour of males in our patriarchal society. Again, few would dispute this statement; however, it masks the reality that society is changing and women are demanding, and obtaining, more power in interpersonal relationships. The reality is that the majority of complainants in sexual harassment cases are women, reflecting both that women are more likely to be harassed and that they are reporting that harassment in increasing numbers. There is a similar situation in divorce cases. In the 1988 report on the *Divorce and Family Mediation Research Study in Three Canadian Cities*, released by the Department of Justice, Canada, it was stated that "(w)hile there are some differences in perceptions between men and women over this question, it appears that, in a majority of cases, it was the wife
who initiated the separation or divorce" (p. 120). This would appear to reflect a similar reality, that wives are willing, and able, to do something about ending their abusive relationship. Although mediation is only used in a small number of divorce settlements (mostly because the parties did not know it was available), more wives than husbands suggested mediation. The study further found that "on average, women do better under mediated than non-mediated settlements" (p. 182). This applied to financial as well as custody issues.

In a follow-up interview in the 1988 Department of Justice study, a majority of the women who settled through mediation expressed satisfaction with the mediation outcome. Power imbalance was not expressed as a concern and the women felt that they had been given an opportunity to express their concerns and feelings about the separation or divorce. It would be reasonable to assume that if power imbalance were felt to be a problem by the complainant in sexual harassment complaints, the complainant response to mediation would be less favourable.

Those who argue against mediation in sexual harassment cases tend to ignore two important issues - how we deal with a variety of types of sexual harassment
from a variety of perpetrators, and what we should put in its place. It would be difficult to argue, for example, that mediation is appropriate in a case where a professor has bargained a grade for sexual favours or in any way put pressure on a student to engage in a sexual relationship against his or her will. A formal hearing with a determination of guilt or innocence followed by appropriate sanctions or punishment, if guilty, is arguably the only way to deal with such a complaint. However, what about the other, more frequently reported types of harassment? Can we justify dismissing a professor for sexist comments or creating a hostile environment in the classroom without giving him or her a chance to change those behaviours? Do we summarily expel students who make homophobic comments? Obviously not. However, if we do not try to effect change through education, do we ignore these types of harassment or submit them all to a formal hearing and investigation? If this becomes the reality, what will happen in those situations where the complainant is very credible but there is little or no evidence to support the complaint? The complaint is likely to be dismissed. Mediation allows the complainant to be heard by the person
complained against and for remediation of the situation without a formal finding of guilt or innocence.

Both summary dismissal of the person complained against and ignoring complaints of sexual harassment are contrary to the Human Rights Code. Most universities have two mechanisms for dealing with sexual harassment complaints, formal and informal. A formal mechanism with a hearing, a verdict and recommended penalties is for complaints of a more serious nature and for those who are repeatedly complained about in spite of mediation and efforts to re-educate. Informal methods allow for a negotiated outcome without a formal investigation. There cannot be, therefore, a formal finding of guilt or innocence. Mediation is usually a part of this informal process, more rarely an intermediate step between the informal and formal process. It is very rare for mediation to be a part of the formal complaint process.

Since mediation is usually a part of the informal process, the participants enter mediation as complainant and person complained against, not victim and proven offender. Those who wish for dismissal of the respondent or a finding of guilt without due process are wanting something that is not legally possible and would leave the university open to charges of discrimination.
Similarly, it would be difficult, if not impossible, to conduct a formal hearing into a complaint and keep the name of the complainant confidential. The accused has the right to know the name of his or her accuser. If complainants are informed of the limits to the process they are entering, they might be more realistic about the expected outcome.

What we have, then, at the informal level, is a mechanism whereby a complaint is made and, if certain criteria are met, the Sexual Harassment Advisor or Officer can attempt to resolve the complaint confidentially. How this is done, and the extent of the Advisor's power to intervene, varies from university to university. Some Advisors have a great deal of freedom to work with the university administration to resolve complaints, others can do little more than advise the complainant to write or talk to the person complained about, without a formal hearing. In universities where the Advisor has more than an advisory role, complaints can be resolved without a formal hearing, through an informal process in which the Advisor negotiates an agreement between the complainant and the person complained against, with or without the intervention of the university administration. In this situation, the
Advisor cannot be impartial, and must have come to some conclusions about the validity of the complaint, in order to act. One of the arguments against the use of mediation to resolve sexual harassment complaints is that the mediator must be a "neutral third party," and therefore cannot address the power imbalance between the complainant and the person complained against. There is, however, a growing recognition that it is not only unrealistic to expect a mediator to be totally impartial, it is acceptable, even preferable, that he or she have some desired outcome in mind at the beginning of the proceedings. This need not be so specific that it interferes with the mediation process; however, the mediator should have a general idea of what would constitute a fair outcome, in order to prevent manipulation of the process by the person with more power, usually the person complained against. Zartman and Touval (1985) are quoted by Wittmer et. al. (1991) as stating that a "biased mediator may be acceptable because that mediator has the ability to provide acceptable outcomes". The research of Wittmer, Carnevale and Walker (1991), indicated that this bias or alignment is likely to be accepted by the parties involved and that the perceived alignment of the
...
mediator is important to the acceptance of suggested outcomes by the participants. Even outcomes less favourable to a participant were accepted by that person, if the mediator were thought to be aligned with them. On the other hand, outcomes favourable to a participant were viewed with suspicion, if the mediator were not thought, by that individual, to be aligned with them. Sexual Harassment Advisors, or Officers, who also act as Mediator, should not, therefore, be afraid to show alignment with the complainant and to make it clear that a fair outcome will be sought. This may increase complainant satisfaction with mediation and reduce the feeling that the Mediator, who had previously advocated for them as Officer, was not on "their side" as the "neutral third party."

The issue of power imbalance in mediation, whilst not one to be lightly dismissed, does not appear to be insurmountable. The solution may be to assess each case for the power differential involved and make a decision whether to proceed on the basis of what is practical. As Sloan (1992) states:

The first principle in balancing power between disputants is not to try in cases where you find the imbalance too severe. The test to apply is: "Is
it possible to balance power in this case without forfeiting my credibility and authority?" If the answer is "no", terminate the mediation. (p. 8)

The range of outcomes reported to be possible through mediation is very wide and could include "almost anything" in the power of the person complained against to grant. This indicates that mediation can be a very powerful tool for resolving sexual harassment complaints. Since the references to mediated outcomes referred only to what the person complained about could grant or give up, the implication is that the stronger position in these negotiations is that of the complainant, rather than the person complained against. This is further indicated by the ranked outcomes of mediation compiled from the questionnaires. The most frequent outcomes were a written apology from the person complained against and a written undertaking not to repeat the behaviour(s) ranked equally with a written report of the complaint and mediation outcome to be kept on file for a specified time period. The combined result of these outcomes would appear to be documents that could be very damaging to the person complained against, should s/he break the agreement or be complained against again during the time specified. This
would appear to constitute a strong deterrent to repeating the behaviours, rather than hiding ongoing, repeat problems, a concern expressed by some questionnaire respondents. The keeping of the mediation file should provide evidence, if required, to justify a formal hearing. It is reasonable to expect that any individual who repeated sexually harassing behaviours, after signing a mediation agreement not to, would be subjected to a formal hearing and possible disciplinary action. If there is a weak deterrent in this process, it would have to stem from an unwillingness, or inability, to use the information in the mediation file, rather than from the mediation process per se.

University sexual harassment policies usually prohibit a variety of behaviours from sexist comments that create a hostile environment to sexual assault. They also provide a process that allows most complaints to be dealt with in a confidential manner. The alternative would be a formal, more public, hearing in every situation to determine guilt or innocence, since it is unreasonable to expect punitive action to be taken without an investigation of the charges. Mediation allows for the education of the perpetrator in order to try to change his or her behaviours and attitudes. This
may happen in several ways. The complainant may choose to address the person complained against and to have that person understand how it feels to be sexually harassed, or the mediator may address the issue as part of the mediation preamble. Either way, it is more likely that the person complained against will "hear" the message and agree to modify behaviours in a negotiated outcome than would happen in a more formal, adversarial setting where a finding of guilt or innocence is of prime importance.

Researchers such as Whittington (1990) appear to want all complaints of sexual harassment to be resolved in a public forum. Whittington (1990) writes of mediation that "the process defeats the purpose" by "privatizing the process of rectification" of a "public crime" and thereby "re-entrenching the myth that sexual harassment is a 'personal problem' shared by two people." (p. 13) Stephen Lewis (1990) (Introduction, p.4) states, however, that "the means shape the end. The process of any action determines the outcome." Lewis's comment was meant as a warning not to become so focused on the outcome of mediation that the way in which the mediation is conducted and the effects on the participants is forgotten, or valued less. It was a plea
for a caring and flexible process. The questionnaire respondents indicated that the strength of the mediation used lies in the fact that it is flexible, confidential, and relies on negotiation to effect a resolution "satisfactory to both parties". To maintain that the process defeats the purpose in all cases recognizes only one inflexible process of mediation, one that is clearly outdated and does not reflect the reality of the variety of mediation processes presently used in universities.

There is no doubt that mediation "privatizes" the process of dealing with the complaint of sexual harassment. However, is this necessarily a bad thing when the desire of the complainant is for confidentiality and both parties express satisfaction with the outcome? Gadlin (1991) discusses the grievant's need to retain control of the complaint and to reduce stress on themselves by keeping the complaint confidential, rather than going through an investigation. Those who advocate getting rid of mediation are not allowing this perspective and are taking power away from the complainant by limiting the ways in which they can take action. It is possible to "make public" the complaints, and actions taken, in the form of an Annual Report which maintains confidentiality
whilst giving a clear message that such behaviours are not acceptable. This is in accordance with the Supreme Court's interpretation of Human Rights Legislation where "(t)he legislative emphasis on prevention and elimination of undesirable conditions, rather than on fault, moral responsibility and punishment, argues for making the Act's carefully crafted remedies effective." (D/4332) The report continues "the interpretation I have proposed makes education begin in the workplace, in the micro-democracy of the work environment, rather than in society at large" (Robichaud v Canada (Treasury Board). D/4333).

The Divorce and Family Mediation Research Study in Three Canadian Cities (1988) cites Kenneth Kressel, who, after a lengthy examination of the research on divorce mediation, concluded that:

    mediation is a vehicle of social influence which is not inherently superior to any other method of conflict resolution. Like the others, it has its own decided liabilities as well as assets (p. 179). In acknowledging this, we can recognize that mediation would not be the process of choice in resolving most sexual harassment complaints. Mediation can, however, be effective in certain types of sexual
harassment. Because of this, it is my belief that mediation should be retained as a choice for complainants.

Summary

This research indicates that the issue of whether mediation is an appropriate form of sexual harassment complaint resolution in universities cannot be answered with a clear "yes" or "no", but rather with "it depends". Those who oppose mediation tend to view it as a rigid process which, by allowing disputants who have unequal power to negotiate as equals through a neutral mediator, continues the victimization of the complainant. Those who support mediation tend to view it as a flexible process that, although not suitable for all complaints, can be used in such a way that the complainant's needs are defended and the power balanced by the active intervention of the mediator. Although the voice of the Sexual Harassment Advisor comes through the research most clearly, there is a perception that the process and outcome of mediation is more acceptable than not to complainants and respondents.
Summary

This study is an exploration of the way(s) in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian universities and to try to determine whether mediation is an appropriate method of resolving these complaints. Mediation has traditionally assumed equal power of the participants, neutrality of the mediator and a willingness to negotiate. Sexual harassment occurs where there is unequal power. Some researchers argue that the power balance can never be equalized by mediation and therefore the outcome will always favour the person complained against. Others argue that mediation can be a flexible process and mediator alignment with the complainant can be used to balance the power between the disputants. Questionnaires were sent to forty-six Canadian universities and interviews were conducted with fifteen Advisors. An analysis of the twenty-two questionnaires returned indicates that mediation is utilized in only a small percentage of sexual harassment complaints (11%). When it is used, however, it has a better than average chance of being successful in
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effecting a resolution (67%). Both complainants and those complained against were reported to have spoken more favourably than unfavourably about the process and outcome of mediation. However, questionnaire respondents indicated that they, themselves, found mediation a slightly less than satisfactory method of resolving sexual harassment complaints. Those universities that had successfully used mediation found it a more satisfactory method of complaint resolution than those that had not.

The conflicting responses mirror the current controversy on the subject, outlined in the second chapter of this thesis. Most arguments given against mediation, by both questionnaire respondents and those interviewed, were divided into two main categories: (1), the problems associated with power imbalance; and (2), the traditional perception of mediation as a private process between disputants resulting in a perception of shared responsibility for the complaint. These factors were believed to both add to the stress experienced by the complainant and work against a resolution satisfactory to the complainant.

Those universities that responded positively to mediation emphasized the flexibility of the mediation
The connection network in a computer network is an interconnecting network which requires the use of software and hardware components. The network is designed using a hierarchical approach, which is divided into several layers. Each layer performs a specific task, and the layers are interconnected to form a complete network. The network layer is the lowest layer, which takes care of the physical layer, and the application layer is the highest layer, which takes care of the application layer. The network layer is responsible for the transmission of data, and the application layer is responsible for the interpretation of the data. The network layer and the application layer are connected to the other layers through the use of protocols.

Protocols are used to communicate between the different layers. The protocols are standardised and are used to ensure the compatibility of the network layers. The protocols are divided into two types: application protocols and transport protocols. Application protocols are used to transfer data between the application layer and the transport layer, and transport protocols are used to transfer data between the transport layer and the network layer. The protocols are used to ensure the reliability and the efficiency of the network communication.
process they used and the less intimidating nature of mediation over a formal complaint procedure. This is particularly true for students, who make the most complaints.

Conclusions

The purpose of this study was to explore the way(s) in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian universities and to try to determine whether mediation is an appropriate method of resolving these complaints. This was done by listening to the voices of those involved, as reported by the Sexual Harassment Advisor or Mediator.

I began this research with specific questions to be answered (see Appendix C, Section C, 1). For clarity of presentation, I will respond to these questions individually and then discuss the strengths and weaknesses of my research methodology.

Questions that guided the research were:

1. Is mediation a satisfactory method of dealing with sexual harassment complaints on campus from the complainant's point of view? Mediation does appear to be
a process of complaint resolution some complainants prefer, for very specific reasons, particularly those of control of the complaint and confidentiality.

2. What purposes are served by keeping such complaints as invisible as possible? Public resolution of complaints is voiced more as a need to punish the perpetrator and, when voiced, is coupled with a desire for complainant anonymity. Clearly, there is a need for publicizing complaints in order to encourage change in behaviours. However, the confusion around this issue indicates that perhaps complainants are not being informed of the requirements of due process when there is a determination of guilt or innocence (e.g., the right of the accused to know who is accusing him or her).

3. Is it possible to achieve a resolution that is satisfactory to both the complainant and to the university? This research indicates that there are not two, but three factors involved: the university administration, the Sexual Harassment Officer or Advisor, and the complainant. The university administration, as represented by such people as the President and the Personnel Director, is perceived to have a very strong interest in keeping complaints
confidential and therefore hidden. The Sexual Harassment Officer or Advisor is acting in a dual capacity. She or he is acting as an official of the university and often on behalf of the complainant. Some Advisors express a need to have a public resolution of complaints, in order to change public attitudes towards sexual harassment. Sexual harassment is, however, a personal hurt and the complainant may not want to be a part of a larger, political movement.

4. What outcomes generally result from mediation of this type? The most frequent outcome was a written apology from the person complained against and a written undertaking to the complainant not to repeat the behaviour(s). Several questionnaire respondents felt that the outcome was limited only by what the person complained against was able to provide.

Less tangible, but perhaps more important, outcomes for the complainant include speaking up and being heard. The confidentiality of the mediation process is beneficial for both parties involved in the complaint. Having the offensive nature of the behaviour acknowledged without having to go through an adversarial process is empowering for the complainant; and, it allows for change through education of the person
complained against. "Shuttle" mediation avoids the power differential inherent to a face-to-face discussion.

5. How does the complainant feel about the process of mediation? How does the person complained about feel? The feelings of both the complainant and person complained against were not clearly heard in this research. There is an indication from the questionnaire results that both are more positive than negative towards the process and outcome of mediation. In the narratives, it is difficult to distinguish their feelings from those of the Advisor.

6. Are there any strategies that can be added to improve mediation from the standpoint of the complainant? Several strategies were suggested, the main one being that mediation should be a flexible process, tailored to the needs of the specific complaint. The use of a shuttle-diplomacy form of mediation, where caucasing is used extensively, if not exclusively, is seen as one means by which balancing of power can be effected. As well, the mediator is expected to take an active role in determining the outcome of mediation and express the expectation of an outcome that, at the very least, does not further victimize the complainant early in the process.
The satisfaction of those complainants who use mediation may indicate that the theory around mediation, both for sexual harassment resolution and divorce settlements where abuse may or may not be present, is trailing behind the current reality. Women do appear to be gaining self-assurance and may not perceive the power balance in either situation to be either inevitable or insurmountable. Women are initiating divorces and making sexual harassment complaints. I believe that continuing to view women as victims, unable to speak on their own behalf does them a disservice and perpetuates the victimization.

**Strengths and Weaknesses of the Research**

This research clearly indicates the outcomes and possibilities of mediation as a form of sexual harassment complaint resolution in universities. It argues the pros and cons of mediation from the perspective of the Advisor. It gives, however, only a small indication of how the complainant feels about the process and outcome of mediation, and this is its weakest aspect. It did not obtain a direct articulation of the complainant's feelings. The turn the study took
was away from the complainants themselves and more towards the Advisors feelings. Perhaps this is not surprising, given that the Advisors were expected to respond for the complainants and, as soon became apparent, Advisors are struggling with these issues on their own behalf. The exploration was somewhat limited by the methodology and the lack of a clear definition of the term mediation. Two other aspects that I did not anticipate were (1) the great difficulties in trying to obtain information from across Canada (I now realize how vast a country it is!) which made trying to follow-up on pilot questionnaire and questionnaire responses very difficult; and (2) perhaps even more confounding, the fact that many Advisors and Officers enter their position with no statistical or written information from their predecessor. This raises the issue of who "owns" the complaint and the complaint process. On a practical level, it makes information-gathering very difficult. Because of these limitations, the results of this research generate more questions than they answer.

Future Research

I am unclear about how most sexual harassment complaints are resolved and how those involved feel about the process. I would like to continue this
research to try to answer some of those questions and, more specifically, to try to get to the voice of the complainant. Much of the research on sexual harassment has been on issues around identifying and reporting harassing behaviours. Complaint resolution has focussed on mediation. We need to broaden the investigation to include all forms of sexual harassment complaint resolution and their effects on the participants. Follow-up studies should be done on complainants to determine whether they felt that the process of complaint resolution was adapted to their needs. It would also be useful to discover whether any retaliation had followed the complaint and how the complainant and person complained against had conducted subsequent interpersonal relations.

My research indicates that mediation is utilized in only a small percent of sexual harassment cases. However, the reasons for this are not clear. One problem might have been the lack of a definition of mediation on the questionnaire, leading to under-reporting. At the time of compiling the questionnaire, I believed that there was only one definition of mediation. The several variations on the traditional model only became apparent during interviews. Perhaps, as with divorce mediation,
the complainant is not aware of the availability of mediation. One of the limitations of this research is that I have not been able to question complainants directly. Questioning the Advisor as a means of getting to the feelings of the complainant has not been successful. Instead, the concerns of the Advisor have become foreground. It is time to move to complainants more directly and gather more information on how the resolution process affects them.

In another research project, I might focus on a few universities, perhaps one large and one small, and invite those who have been through the complaint resolution process to contact me for an interview. There are obvious ethical problems that prevent my use of my own university. One thing I have learned is that research methodology should be kept as simple as possible. Accordingly, I could, perhaps, have permission to attach my card and an invitation to contact me to every third Intake Form of the participating universities. This would make for a self-selected sample; however, it is one method of reaching complainants without any violation of confidentiality on the part of the university.
I would like to research the power position of the role of Sexual Harassment Advisors and Mediators and how this relates to the resolution of complaints. Does a mediated satisfactory outcome depend on the nature of the behaviour complained about, the status of those involved in the complaint, the personality of the mediator, or a combination of all these factors? I anticipate that, by approaching the subject of complaint resolution from two perspectives, a fuller picture of what happens in sexual harassment complaint resolution will be obtained.

Recommendations

The main implication of this research, for me, is that there is a place for mediation in resolving sexual harassment complaints in universities. I feel that the process of mediation has strengths and weaknesses, and is not suited to all complaints. As previously cited:

(i) if the complainant feels that the harassment is likely to escalate, if s/he is frightened or feels threatened; if the incidents complained of involve assault, malice, or harassment by someone who is
The information hereby contained is prepared in the best possible manner and is based on the latest information available. However, the author cannot guarantee the accuracy and completeness of this material. The author accepts no liability for any inaccuracies or omissions. Material is subject to change without notice. This material is not intended to provide comprehensive guidance on the topics covered. It is not intended to be used as a substitute for professional advice. It is not endorsed or guaranteed by any organization or entity. It should not be used for legal, financial, or other purposes without professional advice. The author shall not be held responsible for any consequences arising from the use of this material.
psychiatrically disturbed, mediation is not appropriate.

However, similar arguments may apply to all methods of complaint resolution and I feel they should not be used as a reason for abandoning mediation. Instead, more flexible mediation processes should be shared at conferences, and in publications. Also, we need to discuss ways that have been found to balance the power differential in favour of the complainant. Since mediation is not used very frequently, I believe that universities would be advised to have, at most, a small pool of trained mediators available. In smaller universities, it is possible, and practical, for the Officer or Advisor to act as mediator, when necessary.

I have found that the theoretical basis for wanting to abolish mediation as a method of resolving sexual harassment complaints is based on two main arguments. They are the perceived inability of the mediator to ever balance the power of the victim and perpetrator, and the need for public resolution of complaints in order to facilitate change in society. My research shows that mediation can, and does, impose several restrictions on the person complained against and can be used to negotiate changes in behaviour. The mediator is no-
longer viewed as a "neutral third-party" but as an active participant in the process of mediation who can, and should, have a clear understanding of the power dynamics of the specific situation and an ability to use his or her influence to correct any inherent power imbalance. All of this puts the mediator in a position of power that should be understood and respected by those holding this office. I feel that the training of mediators should reflect these current trends and convey the importance of the influence they wield. Conflict resolution is a dynamic process. If we dismiss mediation as a method of resolving sexual harassment complaints because of adherence to an outmoded view of what constitutes mediation, then we may be losing a valuable tool. Mediation has changed dramatically since the first sexual harassment policies were introduced to universities in the early to mid-eighties and is now used as a flexible process that can be adapted to fit specific requirements. However, mediation is not always suited to every complaint. Issues such as mediator impartiality and power imbalances should be given careful consideration before mediation is suggested as a method of complaint resolution.
For the same reasons, the conventions at the present conference do not appear to be necessary. The present conference is not dealing with any of the convention's proposed tasks, and the situation within the convention is such that the present conference does not seem to be influenced by it. Therefore, I believe that it would be wise for the present conference to proceed without the participation of the convention.

In conclusion, I would like to suggest that the present conference should continue to work independently of the convention. I believe that the present conference is better equipped to deal with the issues at hand, and that its independence will allow it to develop its own agenda.

In light of these considerations, I would like to propose that the present conference adopt a more autonomous approach to its work. This would allow it to focus on its own priorities, and to avoid being weighed down by the conventions' proposals.

In conclusion, I believe that the present conference is better equipped to deal with the issues at hand, and that its independence will allow it to develop its own agenda. I therefore propose that the present conference adopt a more autonomous approach to its work.
Advisors often mentioned their newness to the position and the lack of guidelines given to them. Mediation may seem a particularly formidable step to someone in this position, I feel that it would be useful to pool knowledge on all forms of sexual harassment complaint resolutions and to develop some forms of protocol to act at least as a guide for new Advisors.

Since some cases can be satisfactorily resolved by mediation, we need to examine more closely what processes of mediation are being used, where mediation belongs in the complaint resolution process and what resources should be expended on the training of mediators, given that most complaints are resolved by other means.
REFERENCES


information (it is). As for your last point, you seem to be making a distinction between two concepts. This distinction seems to be important, as it highlights the different aspects of the phenomenon you are observing. However, I believe that it is crucial to maintain a clear explanation of these concepts. If you could provide more details, I would be happy to help you further.


To understand the technical details of a particular system, it is essential to delve into the underlying principles and mechanisms. This requires a thorough understanding of the relevant theoretical foundations.
programs at Canadian universities. Department of Personnel Services, University of New Brunswick.


Richardson, C. J. (1988). Divorce and family mediation research study in three Canadian cities. Department of Justice, Canada.


mediation. *Journal of Conflict Resolution*. Vol 35 No.4 December 594-610.
Appendix A

CAUT Canadian Association of University Teachers

ACPU Association Canadienne des Professeurs d'Université

Policy Statement on Professional Ethics

and Professional Relationships

25-10

Model Clause on Abuse of Professional Authority:

Sexual Harassment

1 The parties agree that sexual harassment as defined herein is an abuse of professional authority and may be the subject of discipline.

2 Complaints of sexual harassment shall be directed to ______. The ______ shall investigate the complaint, mediate and in the event the complaint is not settled make recommendations to all the parties involved.

3

1 The parties should agree on an appropriate person or body to whom complaints can be made. At some universities the ombudsperson may be suitable. In any event the association should have input as to who performs this mediative role by including a provision specifying a mutually acceptable person or official in the collective agreement. Experience in the United States indicates that complaints of sexual harassment are frequently resolved by mediation and because of the sensitive nature of such complaints this step is recommended before the more formal procedures are used. 6 and 7 protect this stage from scrutiny in any subsequent arbitration.

1
Sexual harassment is defined as sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature when:

(a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status or academic accreditation;

(b) submission to or rejection of such conduct by an individual is used as the basis for decisions affecting any term or condition of an individual's employment, academic status or academic accreditation; or

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working or academic environment.

4 Discipline for sexual harassment shall only be imposed in a situation involving professional or supervisory relationship of an academic, counselling or administrative character to which a student, an academic, support or administrative staff member, or another member of the university community is subject.

5 This article shall not be construed so as to inhibit freedom of expression or consensual social or sexual relationships. A member who is involved in, or is entering into consensual relationship which the member is concerned may relate to matters dealt with in this article may advise the dean\(^2\) of those concerns and ask the dean to relieve him/her of any related supervisory or evaluative role. The dean shall make every reasonable effort to meet such a request.

6 Any discipline imposed on a member for sexual harassment shall be subject to the grievance and arbitration procedure. No one involved in the dispute as a mediator under 2 shall be a competent or compellable witness in the arbitration. No evidence shall be given or received as to statements made during the mediative procedures under 2. In the event that the penalty is removed in the grievance or arbitration procedure, at the member's request\(^3\) all reference to the complaint of sexual harassment shall be

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\(^2\) Or other agreed on administrative officer.

\(^3\) In order to ensure that an accurate record of any complaint is available for the makers of subsequent decisions, the member may well wish to leave all the material in the file.
removed from her/his personnel file,\(^4\) and placed in an appropriate archive with access provisions acceptable to the parties.

7

Any complaint of sexual harassment which is not resolved by the procedure in 2 may be subject to the grievance and arbitration procedure. No one involved in the dispute as a mediator under 2 shall be a competent or compellable witness in the arbitration. No evidence shall be given or received as to statements made during the mediative procedures under 2.

Approved by the Board, June 1982 (Interim) and June 1985 (Final).

December 1986

\(^4\) In order for this to be enforced in practice it is necessary to have open personnel files. If the existing provisions governing personnel files do not provide for open files see the CAUT Policy Statement on Personnel Files.
Appendix B

QUESTIONNAIRE

UNIVERSITY ________________________________

TO YOUR KNOWLEDGE:

1. How many incidents of sexual harassment were reported at your University last year (Jan.1 - Dec. 31, 1989)? ________________________________

2. How many times was mediation utilized? ________________________________

3. How many times did mediation constitute the final phase of the complaint process? ________________________________

(PLEASE CIRCLE YES OR NO, AS APPROPRIATE)

4. Which of the following outcomes of mediation are possible at your University:

   A. Verbal apology from person complained against and an undertaking to the complainant not to repeat the behaviour(s) YES/NO

   B. Written apology from person complained against and a written undertaking not to repeat the behaviour(s) YES/NO

   C. A written report of the complaint and mediation outcome to be kept on file for a specified time period YES/NO

   D. Limitation of contact with the complainant by the person complained against for a specified time period YES/NO

   E. An agreement to a specific course of action to be taken by the person complained against within a specified time period (eg. attending a workshop on sexual harassment YES/NO
F. OTHER - please list below any other possible outcomes:

5. PLEASE RANK THE FOLLOWING OUTCOMES OF MEDIATION ACCORDING TO THE FREQUENCY THEY WERE USED AT YOUR UNIVERSITY LAST YEAR.

A. Verbal apology from person complained against and an undertaking to complainant not to repeat the behaviour

B. Written apology from person complained against and a written undertaking not to repeat the behaviour(s)

C. A written report of the complaint and mediation outcome to be kept on file for a specified time period

D. Limitation of contact with the complainant by the person complained against for a specified period of time

E. An agreement to a specific course of action to be taken by the person complained against within a specified time period (eg. attending a workshop on sexual harassment)

F. OTHER - PLEASE SPECIFY

(PLEASE CIRCLE THE MOST APPROPRIATE)

6. In general, the COMPLAINANT expressed:

A. Positive, neutral, negative comments regarding the PROCESS of mediation

B. Positive, neutral, negative comments regarding the OUTCOME of mediation

(PLEASE CIRCLE THE MOST APPROPRIATE)

7. In general, the PERSON COMPLAINED AGAINST expressed:

A. Positive, neutral, negative comments regarding the PROCESS of mediation

B. Positive, neutral, negative comments regarding the OUTCOME of mediation

8. How do YOU rate mediation as a successful method of resolving sexual harassment complaints in your University?

5 4 3 2 1
VERY GOOD GOOD SATISFACTORY FAIRLY SATISFACTORY POOR
(PLEASE CIRCLE YES OR NO AS APPROPRIATE)

9. Do you feel mediation is the MOST SATISFACTORY way of dealing with sexual harassment complaints for the COMPLAINANT YES/NO

If YES, please elaborate

If NO, please elaborate and indicate what you think WOULD BE the most satisfactory way of dealing with sexual harassment for the COMPLAINANT, and why

(Please use the other side of this paper, if necessary)
(PLEASE CIRCLE YES OR NO AS APPROPRIATE)
10. Do you feel mediation is the **MOST SATISFACTORY** way of dealing with sexual harassment complaints for the **UNIVERSITY**? YES/NO

If YES, please elaborate

If NO, please elaborate and indicate what you think **WOULD BE** the most satisfactory way of dealing with sexual harassment complaints for the **UNIVERSITY**, and why


(Please circle the most appropriate word(s). Please elaborate)
11. To your knowledge, how were the sexual harassment policies and procedures of your University devised:

   ADMINISTRATION / SEXUAL HARASSMENT ADVISOR / COMBINATION /
   OTHER

12. What, if anything, would you like to see changed about the procedures your University uses to deal with sexual harassment complaints? Why?

13. Please indicate below and over any comments about the issues addressed in this questionnaire. THANK YOU FOR HELPING ME.
CONSENT TO RELEASE OF INFORMATION

I, ______________________________ agree that the information obtained from the accompanying questionnaire on the role of mediation in resolving sexual harassment complaints in Universities may be used for research purposes and published as part of a research thesis, provided that the identity of both the University and individuals connected to the University (including the signatory) be kept confidential. I understand that every effort will be made to disguise any features that may identify either the University or individuals connected to it.

SIGNED:___________________________________

DATE:______________________________________
Appendix C

ETHICS COMMITTEE

SECTION A. RISKS TO PARTICIPANTS.

A1. Although the research topic is sexual harassment, the focus is on the effectiveness of mediation in resolving complaints in Universities. The individuals to be surveyed are professionals working as mediators and they will be asked to recall participants' comments and feelings regarding the process of mediation. Since the mediators will not be asked questions that relate directly to their own sexuality and all information will be anonymous, it is not anticipated that the research will cause psychological harm to the participants.

SECTION B. CONSENT OF PARTICIPANTS

B6. The name of the University only is asked for in both the questionnaire and interviews. Information obtained will be analyzed using descriptive statistics. The Universities will not be identified by name. Written analysis and conclusions will also be in general terms. If quotations, or other possibly identifying information is essential to the report, all specific information that might identify the individual or University will be removed eg. stating 'a mediator in one University reported: ' rather than 'a mediator in an East Coast University'. Consent forms will be kept separate from questionnaire and interview information and will not be used to 'match' participants and University.
CONSENT FORM

This research is being conducted to explore the ways in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian Universities. Any information obtained from the questionnaire and interview will be presented in a way that does not identify either the University or the individual surveyed. Questionnaires and interview material will be kept separate from consent forms and no attempt will be made to publicly 'match' them. Quotations from the questionnaire and the interview may be used to illustrate a point or identify a trend. When this happens, neither the subject nor the University will be identified either directly or indirectly.

Having read the above information and being aware of the nature of the research, I give consent to the contents of this questionnaire being used in the manner described.

SIGNED: __________________________________________
DATE:________________________________________
SECTION C. THE RESEARCH PROTOCOL.

1. The major objectives of the research are to explore the way(s) in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian Universities.

The following questions guide the inquiry:

Is mediation a satisfactory method of dealing with sexual harassment complaints on campus, from the complainants point of view?

What purposes are served by keeping such complaints as invisible as possible?

Is it possible to achieve a resolution that is satisfactory to both the complainant and to the University?

What outcomes generally result from mediation of this type?

How does the complainant feel about the process of mediation? How does the person complained about feel?

Are there any strategies that can be added to improve mediation from the standpoint of the complainant?

SECTION C.

2. QUESTIONNAIRE:

The total population of Canadian Universities is 50. Pilot testing of the questionnaire will reduce this number to 46. An initial letter, explaining the research topic will be sent to each University's Sexual Harassment Advisor or Advisory Committee asking for the name(s) of any Sexual Harassment Mediator(s) employed by the University.

A questionnaire will be sent to each mediator so named. In the event that the University does not use mediation, a questionnaire will be sent to the Sexual Harassment Advisor, Officer, or most appropriate person on the Advisory Committee.

INTERVIEW:

From the total Canadian University population, 15 will be selected randomly. This should produce a population of 25 - 30 people, given that Universities that utilize mediation usually have more than one mediator. One randomly selected mediator from each of the 15 Universities will be contacted and asked to participate in an interview. If the first mediator declines, a second randomly selected mediator from the same University will be contacted. In the event that none of the mediators at that University is willing to be interviewed, an alternative University will be randomly selected and the process repeated.

It is hoped that at least ten of the interviews will take place in Toronto, Ontario, during the Annual Conference of the Canadian
ASSOCIATION OF SEXUAL HARASSMENT ADVISORS IN HIGHER EDUCATION, November 1990. The balance of the interviews will be made by telephone.

SECTION C.
3. Advisors will receive an initial covering letter, asking for their co-operation in the research. The participants will receive a questionnaire with covering letter and consent form. They will be asked to fill in the questionnaire and return it by a specified date. Those selected for interview will be contacted and asked to participate in either a telephone or personal interview. They will be asked to read and sign a consent form. They will be asked if the interview can be taped. If consent is withheld, it will be explained that notes will be made after the interview and they will be able to read them, if they desire. During the interview, participants will be encouraged to express their feelings about the process of mediation in dealing with sexual harassment complaints in Universities. Interviews should last about an hour. Participants will be thanked for their co-operation, and the anonymous nature of the interview material will be stressed.

5. Questionnaires will be identified by University only. All questionnaires will be kept in a locked filing cabinet in my office. Consent forms will be used only for an initial matching of material and then will be stored separately in the filing cabinet. Tapes of interviews will also be stored in a locked filing cabinet. Interviewees will not be asked to identify themselves or their University during the interview. All material will be kept for two years and then destroyed by shredding or erasing.
CONSENT TO INTERVIEW FORM

RE: An exploration of the way(s) in which the process of mediation affects those involved in the resolution of a sexual harassment complaint in Canadian Universities.

I understand that the information given in this interview will be used for the specified research project only and that it will be destroyed or erased at the end of two years. I understand also that identifying information regarding either the interviewee or the University represented will not be used. I am aware of the nature of the research being conducted and DO/DO NOT give permission for this interview to be taped.

If the interview is not taped, I understand that notes will be made on the interview at a later date and that I will be able to obtain a copy of those notes, should I wish to.

SIGNED: ____________________________
DATE: ____________________________
Appendix D

SAMPLE INTERVIEW QUESTIONS:

How do you view the process of mediation as a resource for resolving sexual harassment complaints?

What type of comments do complainants make about mediation?

What kinds of comments have Officers or Advisors who have used Mediation made about mediation?

What do you view as the process of mediation?

What purposes are served by keeping sexual harassment complaints as invisible as possible?

Are there any strategies that can be used to improve mediation from the standpoint of the complainant?
Appendix E

Initial Letter

October 12, 1990

Dear Colleague,

I am researching the effectiveness of mediation as a method of resolving sexual harassment complaints in Canadian Universities. I am currently the Sexual Harassment Advisor at Brock University, St. Catharines, and am completing my Master of Education degree. The research on mediation, as well as being of professional interest, will form the basis of my thesis.

I would be grateful if you could help me in two ways: First, could you send me a copy of your University's Policies and Procedures on sexual harassment. Second, if you do not mediate sexual harassment complaints, could you send me the names and Departments of those people in your University who are designated mediators.

I will be sending out a questionnaire to all mediators on October 31st., and this information is essential; I would be grateful, therefore, if you could respond by October 25th.

Thank you for your co-operation.

Yours sincerely,
Appendix F

Pilot Questionnaire Covering Letter

Ann Bown
Sexual Harassment Advisor

October, 1990

Dear Colleague,

I am researching the effectiveness of mediation as a method of resolving sexual harassment complaints in Canadian Universities. I am currently the Sexual Harassment Advisor at Brock University, St. Catharines and am completing my Master of Education degree. The research on mediation, as well as being of professional interest, will form the basis of my thesis.

I would be grateful if you could help me by completing and returning the enclosed pilot questionnaire. Any comments you might have regarding the clarity and presentation of the questionnaire would be most welcome.

I intend to send the final questionnaire to all University mediators on October 25th., and would appreciate your response as soon as possible.

Thank you for your co-operation,
Appendix G

Questionnaire Covering Letter

November 12, 1990

Dear Colleague,

Your name as a University mediator* has been sent to me by the Sexual Harassment Advisor, or equivalent, at your University, and I am writing to request your help in a research project.

I am currently the Sexual Harassment Advisor at Brock University, St. Catharines, and completing my Master of Education degree. My research interest is in the effectiveness of mediation as a method of resolving sexual harassment complaints in Canadian Universities. The research methodology will take two forms, a questionnaire and personal interviews.

I am writing to the mediator(s) in every Canadian University and enclosing a questionnaire. Information obtained from the questionnaires will be analysed by descriptive statistics and presented with a written summary of results and conclusions.

All information given will be anonymous, identifying information regarding both respondent and University will be removed. A random sample of mediators will be contacted at a later date for an in-depth interview.

I would be grateful if you could complete the enclosed questionnaire and consent form and return them to me by November 30.

Thank you for your help.

* I am finding that several Universities do not have mediators or that mediation is performed by the Sexual Harassment Advisor, or equivalent. If this is the case at your University, please have the questionnaire completed by the most appropriate person.
null
Appendix H
Second Questionnaire Letter

March 8th., 1991

Dear Colleague,

I am soliciting your help in completing my Master of Education degree. Could you please answer and return the enclosed questionnaire. A stamped, addressed envelope is included for your convenience. The questionnaire should take about twenty minutes of your time.

I am currently the Sexual Harassment Advisor at Brock University and my research interest is in the effectiveness of mediation as a method of resolving sexual harassment complaints in Canadian universities. Mediation, or the intervention of an impartial third party to try to resolve disputes, may be undertaken by the Advisor, Officer or other designated individual.

My research methodology is taking two forms, a questionnaire and personal interviews. I sent a copy of the enclosed questionnaire to every Canadian university in November, 1990 and the results are very interesting. However, the low rate of return of completed questionnaires means that the data is not sufficiently significant to use as the basis of a thesis.

Since there is such a small population to survey, it is vitally important that every questionnaire be completed and returned, whether or not mediation is used at your University. Only in this way can a 'snapshot' view of the total population be obtained.

All information given will be anonymous, identifying information regarding both respondent and University will be removed. A random sample of mediators will be contacted at a later date for an in-depth interview.

Please take the time to complete the questionnaire and return it in the enclosed envelope.

Thank you for your assistance,
Appendix I

Second Pilot Questionnaire Letter

March 8th., 1991

Dear Colleague,

I am soliciting your help in completing my Master of Education degree. The enclosed questionnaire is part of a pilot survey on mediation and sexual harassment. Your comments will form the basis for revision, if any, of the final questionnaire. It is particularly important, therefore, that your questionnaire be returned. A stamped, addressed envelope is included for your convenience. The questionnaire should take about twenty minutes to complete, and I appreciate the time you have taken.

I am currently the Sexual Harassment Advisor at Brock University and my research interest is in the effectiveness of mediation as a method of resolving sexual harassment complaints in Canadian Universities. Mediation, or the intervention of an impartial third party to try to resolve disputes, may be undertaken by the Advisor, Officer or other designated individual.

My research methodology is taking two forms, a questionnaire and personal interviews. All information obtained will be anonymous, identifying information regarding both respondent and University will be removed. A random sample of mediators will be contacted at a later date for an in-depth interview.

Please take the time to complete the questionnaire and to comment on any wording that might be unclear or confusing.

Thank you for your assistance,