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PREDICTING THE QUANTITY OF LAW: Single versus Multiple Remedies in Sexual Harassment Cases

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Recently, Black's theory of law has been criticized for failing to capture quasi and de facto governmental social control institutions. A restatement of this theory introduces the idea of "more or less governmental social control" that encompasses government endorsement of private forms of social control or government delegation of social control powers to private parties. Drawing from this, we assess the utility of Black's theory by examining sexual harassment cases handled by the Canadian Human Rights Commission, a quasi-governmental body that has been delegated social control powers. Previous tests of Black's theory have relied primarily on criminal processes that often involve identifiable increments in law. While a sexual harassment case may be settled or dismissed, paralleling the criminal justice process of conviction or acquittal, further increments in law are less identifiable within this quasi-governmental institution. Using over 200 sexual harassment cases in Canada, we test several concepts from Black's theory for explaining decision making within a quasi-governmental social control institution and, specifically, for predicting whether single or multiple remedies are used to resolve these types of cases. Our results show some support for Black's theory, but demonstrate that whether a case was sent to conciliation played a greater role in predicting the quantity of law than the social structural dimensions emphasized by Black or the offense seriousness variables highlighted by more traditional criminal justice research.

INTRODUCTION

In *The Behavior of Law*, Donald Black (1976) formulates what has become a controversial sociological theory of law and its behavior. Simply put, he argues that law is a variable that is both quantifiable and predictable using social, rather than psychological, phenomena. Black contends that his theory of law can be applied to all social control settings, but most empirical examinations of his theory to date have focused on penal styles of social control.[1] Recently, Wong (1998) has argued that Black's theory fails to capture de facto and quasi-governmental social control institutions because it relies on a dichotomous description of government. That is, the theory assumes that there is either "government" or "no government" and, if there is government, it is a unitary, monolithic entity (Wong 1998). Offering a restatement of his theory, Wong (1998) introduces the idea of "more or

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less governmental social control," a term that encompasses government endorsement of private forms of social control or, put another way, government delegation of social control powers to private parties.

In this article, we use Wong's reformulation to assess the applicability of Black's model of law to a quasi-governmental agency to which social control powers have been delegated. As such, this article represents an exploratory analysis of Black's theory of law and its ability to explain the behavior of an agency with "more or less governmental social control." Specifically, we examine Black's theory for understanding social control decision-making by the Canadian Human Rights Commission (CHRC) when responding to sexual harassment complaints. Below, we describe Black's theory of law, followed by a discussion of Wong's (1998) concept of "more or less governmental social control" and how it relates to the CHRC.

THEORETICAL FRAMEWORK

The Behavior of Law

For Black (1976), law is governmental social control that can be explained by social rather than psychological variables. He focuses on five key aspects of social life: stratification, morphology, culture, organization, and social control. In particular, he hypothesizes that the behavior of law is a function of the social location and direction of victims and defendants with respect to these five dimensions. Black defines stratification as the "uneven distribution of the material conditions of existence," or the "inequality of wealth" (Black 1976:11). Simply put, those who occupy the upper strata of society will have access to more law, especially against those who occupy the lower strata. Social morphology refers primarily to the degree to which people participate in one another's lives—the more that victims and defendants are involved in each other's lives, the less law will be present. Culture, for Black, can be measured by a society's "variation in the number of languages, concepts, ideas" (Black 1976:63) whereas organization is society's "capacity for collective action . . . measured in terms of the presence and number of administrative officers, the centralization and continuity of decision-making, and the quantity of collective action itself" (Black 1976:85). Finally, social control is the normative aspect of social life; "what defines and responds to deviant behavior, specifying what ought to be" (Black 1976:105). As other types of social control increase, the quantity of law will decrease, according to this theory.

Black's theory relies on an empirical rather than a normative definition of law. As a result, law has no fixed form or content beyond that which is constructed by society and its members. In short:

> law [has] an evolving content anchored within the hearts and minds of the people as reflecting deeper cultural tradition, broader social convention and emerging interests of every imaginable kind, and also as structure by organizational constraints and driven by situational dynamics. (Wong 1998:77)

As such, the common emphasis in criminal justice theories on offense seriousness and the consequences of the offender's actions are not considered relevant by Black because

"social control defines what is deviant. And, the more social control to which it [the behavior] is subject, the more deviant the conduct. In this sense, the seriousness of deviant behavior is defined by the quantity of social control to which it is subject" (Black 1976:9). Black's use of the term, then, differs from that of other researchers in law and criminal justice.

Black's theory of the behavior of law has been popular because of its simplicity and clarity as well as its potential for bridging the gap between legal and sociological conceptions of law (i.e., socio-legal theory). Several studies have addressed criminal law and criminal justice aspects of this theory (Gottfredson and Hindelang 1979; Braithwaite and Biles 1980; Kruttschnitt 1980–1981; 1982; Myers 1980; Smith 1987; Massey and Myers 1989). However, there have been mixed empirical results. In addition, despite the theory's potential, it has not been without its critics. Sherman (1978) argues that Black's concept of law has no meaningful definition. Furthermore, Gottfredson and Hindelang (1979) criticize the theory because offense seriousness or the harm caused by the offender is not in and of itself important other than how these elements are defined by the amount of social control.[2] Most recently, as noted, Wong (1998) criticizes the theory for its apparent inability to explain governmental social control in settings that emphasize, among other things, family discipline, clan rule, or trade regulations. Below, we discuss Wong (1998) in more detail, drawing the link between his proposed reformulation of Black's theory and the operation of the CHRC.

Linking "More or Less Governmental Social Control" to the CHRC

Wong (1998) argues that Black defines government in dichotomous terms, failing to allow for the idea of "more or less governmental social control" such as the delegation of governmental social control rights to private parties or, alternatively, government sponsorship of private social control measures (Wong 1998:94). The first type of control refers to the state handing over responsibility for social control to a private party. According to Wong (1998), there are three types of social control authority for which this may occur: (1) the authority to define social norms (legal-policy setting), (2) the authority to establish social norms (lawmaking), and (3) the authority to enforce social norms (law execution). The second type of control—state sponsorship of private social control activity—usually involves some degree of state participation in whatever form of private social control that they sponsor.

Drawing from the above, then, the question becomes how does law behave when private parties are responsible, or partially responsible, for exercising governmental social control? For example, if a private party has absolute social control, it is able to establish, enforce, and adjudicate the social control norms under its charge. This often means wide discretion and little accountability (Wong 1998). If a private party has more limited and partial social control responsibilities, agents acting for the state may have discretion only with respect to one or two types of social control duties (i.e., policy setting, law making or the execution of law). Below, we describe the CHRC and where it falls on the continuum with respect to "more or less governmental social control" as conceptualized by Wong (1998).

The CHRC is responsible for administering the Canadian Human Rights Act (CHRA). As part of their duties, the CHRC "ensures that the principles of equal opportunity and nondiscrimination are followed in all areas of federal jurisdiction" (CHRC 1998:5). The CHRC oversees federally regulated workplaces that come primarily from "key private interprovincial operations in communications and transportation, federally chartered banks and some mining operations" (Pellicciotti 1996:348). In addition, the CHRC has jurisdiction over all departments and divisions of the federal government, including the Canadian Armed Forces and Crown Corporations.[3] With respect to sexual harassment, then, the CHRC plays an important role in adjudicating human rights complaints for individuals who have experienced workplace sexual harassment within these environments.[4]

In Canada, complainants are extremely limited in their ability to file civil lawsuits against employers based on sexual harassment or discrimination. In contrast, civil lawsuits are a potential avenue for complainants in the United States—a mechanism that can serve to bring employers in line, especially when multimillion dollar damages are awarded. This is not to say that the U.S. civil liability framework is preferred. Rather, it highlights the importance of both federal and provincial commissions for protecting human rights in Canada. In the case of sexual harassment, complainants often turn to the CHRC after internal or union complaint procedures are exhausted. In many ways, then, one might consider this quasi-judicial agency to be the "court of last resort" for sexual harassment complainants in federally regulated workplaces. When resolving complaints, the focus for the CHRC is on remedying the situation and making the complainant "whole" by compensating for "hurt feelings" or other damages (e.g., lost wages) that result from the sexual harassment. In other words, the human rights process is remedial rather than punitive.

With respect to Wong's (1998) concept of "more or less governmental social control," it is important to note that the CHRC is not a private party with absolute social control responsibilities. Rather the CHRC represents a semiautonomous, quasi-judicial agency with the following mandate: Ensuring that discrimination and pay equity complaints are investigated; auditing (and taking action) to ensure compliance with the Employment Equity Act; monitoring any programs, legislation, and policies to ensure that the human rights of women, Aboriginals, visible minorities, and persons with disabilities are protected; and promoting public understanding of human rights and the CHRC through the development and delivery of information programs (CHRC 1998). Because the CHRC has jurisdiction over the federal government with respect to human rights, it may, at times, be in conflict with the government (i.e., the state). Therefore, the CHRC represents a semiprivate or semiautonomous agency that has been delegated governmental social control over human rights.

According to Wong, then, the CHRC would fall into the second category—state sponsorship of (semi)private social control activity. With respect to Wong's discussion of the various types of social control authority, the CHRC has authority to define social norms with respect to policy making. For example, when investigating sexual harassment cases, the CHRC makes decisions about acceptable or unacceptable workplace behavior. It also

has the authority to adjudicate social norms because CHRC decisions can be precedent setting with far-reaching effects. However, this social control body has less authority when it comes to the enforcement of social norms (law execution) because its mandate is primarily remedial, not punitive. In other words, the CHRC does not have the power to charge employing organizations or individuals for failure to comply with their orders. While they can pursue those respondents that do not comply with decisions and resolutions, they do not have the power of the courts to subpoena witnesses and they have to work with other government agencies to enforce their decisions. Below, then, we describe the data used to explore how Black's theory of law might explain decision making within this quasi-governmental social control institution and, specifically, for predicting the quantity of law—whether single or multiple remedies are imposed.

DATA AND METHODS

Our data were collected from sexual harassment complaints lodged with the CHRC between 1978 and 1993. Access was granted to the CHRC files after the CHRC expressed interest in collecting data about their sexual harassment complaint procedures. Coding sheets used for data collection were shown to and approved by the CHRC. Given that the initial coding sheet was developed after viewing only one file, ongoing negotiations to add additional coding information took place as familiarity with the files and what was contained in them increased and as new research questions developed. All requests for additional variables were granted by the CHRC and, in some instances, additional variables were suggested by CHRC staff.

The data were collected after reading and coding information from case files compiled by individual CHRC investigators. These files contain detailed records of what occurred, the investigation process, and how the complaint was resolved. Sexual harassment complaints were identified using the designation developed by the CHRC; that is, sexual harassment complaints are classified under Section 14 of the CHRA and under the grounds of "Sex" or "Sexual Harassment." All complaints coded for analysis were filed in this manner. Only those complaints that were closed (i.e., dismissed, no further proceedings, settled) by December 1995 were coded for analysis. Ongoing cases or those in the process of being investigated were not coded because there had not yet been a resolution to the case. Complaints are filed against both corporate (employing organizations) and individual respondents (alleged harassers) and both types of complaints were coded for analysis.

After reading through several investigator reports that included supporting documents and letters, we developed a coding sheet that captured details about the complaint such as complainant's sex, the type of organization where the alleged harassment occurred, the type of harassment behavior, its frequency and severity, and the complaint resolution. Qualitative information about the harassment and the CHRC decision-making process were also recorded. Because of the confidential nature of these complaints, all the information was coded at the CHRC offices in Ottawa, Ontario, by the principal investigator and two graduate research assistants. Coders were trained

collectively on the same complaints. Because two people were coding complaints at the same time, questions that arose during the coding process were discussed and resolved on the spot. At two stages in the process, intercoder reliability checks were conducted that resulted in an overall reliability coefficient of .89, indicating a high degree of consistency between coders.

The 235 complaints used in our analysis represent the total population of settled complaints against both corporate (N = 144) and individual respondents (N = 91) lodged by female complainants with the CHRC between 1978 and 1993 and closed by 1995.[5] Complaints were coded as settled if there was a formal settlement approved by the CHRC (and obtained through the formal mechanisms of the CHRC) or if there was documentation that an informal settlement had been reached through a private agreement between the complainant and the respondent because informal settlements were sometimes reached before the CHRC had completed their investigation.

Our data are unique for three reasons. First, as noted, data were drawn from the total population of sexual harassment complaints adjudicated by this national commission. As a result, they are not affected by regional variations in the adjudication of sexual harassment (cf. Knapp and Heshizer 2001). Second, in contrast to previous studies examining sexual harassment complaint resolution in formal settings (Terpstra and Baker 1988; Knapp and Heshizer 2001), we examine complaints over a period of time that capture the emergence of sexual harassment as a social problem and the development of federal policy responses to this social problem. This allows us to assess temporal changes in the CHRC response to sexual harassment complaints. Finally, we had access to the total number of sexual harassment complaints closed by the CHRC during a 16-year period. Therefore, our data do not suffer from the methodological problems inherent in using published judicial decisions to assess case outcomes (cf. Siegelman and Donohue 1990).

VARIABLES AND MEASUREMENT

Dependent Variable

As mentioned above, previous empirical tests of Black's theory of law have focused primarily on criminal justice decision making that often involves identifiable increments in the amount of law. Paralleling the criminal justice process in which an accused is convicted or acquitted, complainants and respondents in sexual harassment cases that come before the CHRC may have their cases settled or dismissed (Welsh, Dawson, and Griffiths 1999; Welsh 2000). Similar to the criminal sentencing process, when a sexual harassment complaint is settled, cases are subject to various remedies or outcomes. Despite some of the similarities between the two social control environments, however, increases in law in sexual harassment complaints are not as easy to identify as in criminal cases. Furthermore, there is little prior research to draw from and, as a result, little conceptual guidance about the relative seriousness of available remedies in cases of sexual harassment. To complicate matters further, there may be individual and/or employing organizations in sexual harassment cases and we expect that remedies may pose different hardships depending on the type of respondent. Therefore, in this article, we focus on whether there was a

TABLE 1. Frequency of Multiple Remedies and Frequency and Type of Remedy, Total Sample[a], Settled Sexual Harassment Complaints, Canadian Human Rights Commission, 1978–1993 (N = 235)

Variable	Percentage/Mean
Dependent Variable: Quantity of law	
Multiple remedies (more than one remedy = 1; one remedy only = 0)	56%
Type and Frequency of Remedy	
Monetary settlement	74%
Letter of apology	38%
Sensitizing classes	26%
Sexual harassment policy	13%

[a]Total sample consists of employing organizations and individual respondents.

single remedy imposed versus multiple remedies rather than trying to determine whether one particular remedy is more serious than another.

The dependent variable in this analysis, then, captures the quantity of law imposed in sexual harassment cases. Specifically, it captures whether or not the CHRC believed that one remedy was sufficient to respond to a case of sexual harassment or that multiple remedies were required. It should be noted here that the dismissal of an employee is not a remedy that is available to the CHRC because it does not have the authority to do so.[6] As noted above, the CHRC is not a punitive body, but rather one that focuses on remedying the situation. Table 1 shows that the majority of cases—56 percent—involved more than one remedy and that, in this sample, four types of remedies were common: monetary settlements, the development of or amendment to a sexual harassment policy, mandatory harassment sensitizing classes, and finally, letters of apology. The CHRC may decide in one case that a monetary settlement is sufficient to redress the situation (i.e., a single-remedy outcome) whereas in another case a monetary settlement is ordered along with the implementation of a sexual harassment policy and a formal letter of apology (i.e., a multiple remedy outcome). As a result, we want to determine what factors predict more law (i.e., multiple remedies) in these cases.

Independent Variables

Table 2 lists all the independent variables included in the analysis, their measurement, and their distribution among this sample. Drawing from Black (1976), our first set of predictors measures the social location of respondents and complainants. First, we measure whether the harasser was in a position of authority over the complainant (including those with formal title of supervisor as well as instructors or other workplace leaders) or was a coworker. Second, we include a variable that captures whether the complainant was a temporary or probationary employee that would suggest some organizational vulnerability compared to full-time workers. These two variables capture two of the social aspects identified by Black (1976)—stratification and morphology—the vertical and horizontal location of the harasser and the complainant within the workplace. With respect to

TABLE 2. Descriptive Statistics for Social Location, Offense Seriousness, and Case Processing Variables, Total Sample[a], Settled Sexual Harassment Complaints, Canadian Human Rights Commission, 1978–1993 (N = 235)

Variable	Mean	Standard Deviation
Social Location Variables		
Stratification/morphology		
Harasser in position of authority (Authority = 1)	.81	.39
Complainant temporary or probationary employee (Temporary worker = 1)	.23	.42
Organization		
Multiple alleged harassers in case (More than one harasser = 1)	.38	.48
Multiple complainants in case (More than one complainant = 1)	.25	.43
Complainant in high-status occupation (High status = 1)	.23	.42
Nonfederal organization (Nonfederal corporation = 1)	.58	.49
Culture[b]		
(Time Period: 1978–1983; reference category)		
Time period: 1984–1989	.31	.46
Time period: 1990–1993	.60	.49
Social control		
Prior complaints (More than one previous complaint = 1)	1.95	5.79
Size of organization (Number of employees; continuous)	10.83 (logged)	2.68
Annual sales of organization (Profits in dollars; continuous)	23.12 (logged)	3.89
Offense Seriousness Variables		
Harassment involved quid pro quo behavior (Quid pro quo = 1)	.51	.50
Complainant experienced psychological distress (Psychological distress noted = 1)	.43	.50
Complainant no longer in job where harassment occurred (Out of job = 1)	.74	.44
Case Processing Variable		
Case sent to conciliation (Conciliation = 1)	.36	.41

[a]Total sample consists of employing organizations and individual respondents.

[b]The measures for time period are not used in the analysis of individual respondents because complaints could not be lodged against individuals until 1989.

stratification, Black (1976) argues that "law varies directly with rank" (p. 17) and "downward law is greater than upward law" (p. 21). Therefore, it is important to consider whether a power relationship is present in a particular case such as whether the alleged harasser had authority over the complainant in the work environment or if the alleged harasser had the power to determine the future of the complainant as might be the case with a temporary or probationary worker.

With respect to morphology, Black states that "law varies directly with integration" (p. 49) as well as with the degree of intimacy that exists among or between people. We

argue that whether a complainant is subordinate to the alleged harasser or is a temporary employee has implications for the degree to which the complainant is integrated within the work environment or the degree to which the complainant and the alleged harasser interact or participate in each other's lives. For example, a temporary employee may be less integrated than a permanent employee and, thus, may have access to less law against a respondent who is a permanent employee and more integrated.

Capturing another aspect of social life as identified by Black (1976), four variables measure the degree of organization. Black refers to organization as "the corporate aspect of social life, the capacity for collective action" (p. 85). Drawing from Myers (1980), the first two variables we use to capture the degree of potential organization are the number of alleged harassers and complainants involved. We hypothesize that the greater the number of respondents and/or complainants, the greater their potential ability to organize and/or elicit official actions or responses. A third variable measures whether the complainant occupied a low-status or high-status occupation. We hypothesize complainants that occupy high-status positions (i.e., managers or professionals) may have a greater capacity for or will be more likely to elicit official responses. Finally, we measure whether it was a federal or nonfederal workplace, hypothesizing that the type of company may affect the ability to organize for both respondents and complainants.

Culture is another aspect of social life that Black (1976) argues will affect the behavior of law. According to his theory, culture as the "symbolic aspect of social life . . . includes conceptions of what ought to be, what is right and wrong, proper and improper" (p. 61). We suggest that the time period in which a sexual harassment case was opened can also be considered a measure of the culture in which social control decision making occurs in a wider, societal sense. While social norms may not always be expressed as "official" rules or contained within legal codes, each norm has a history much like an article of common law (Fineman 1994). In other words, norms are an accumulation of decisions made by a community over a period of time that gradually gather enough recognition to serve as a precedent for future decisions about deviant or criminal behavior (Erikson 1964). Since the early 1970s, both public and legal attention has been drawn to the problem of violence against women in various spheres of social life, including that of the workplace and their experience of sexual harassment. As a result, decisions about sexual harassment may be made using analogies and distinctions within the context of precedent.

To determine the effect of culture (or legal precedents) in cases of sexual harassment, we distinguish among three time periods: 1978–1983, 1984–1989, and 1990–1993. The reference category comprises cases filed in the early period, 1978–1983. We distinguish these cases from those filed between 1984 and 1989 because of a 1984 decision by the CHRC Human Rights Tribunal. In *Robichaud v. Federal Treasury Board*, the CHRC stipulated that employers were liable for the sexually harassing behavior of their employees.[7] Similarly, the period 1990–1993 represents another distinct time period because of the 1989 Canadian Supreme Court decision, *Janzen v. Platy*.[8] These two cases set legal precedents for circumstances under which employing organizations were liable for the sexually harassing behavior of their employees and for what constitutes sexual harassment. Thus, we hypothesize that cases filed during later years are more likely be settled in favor of the

complainant (i.e., multiple rather than single remedies) because of these larger cultural and social changes.

Other social control is the last social aspect identified by Black (1976), describing it as the normative aspect of social life. "It defines and responds to deviant behavior, specifying what ought to be. . . . It divides people into those who are respectable and those who are not" (p. 107). Law will be greater when there is less respectability. A key variable in this analysis, then, is the number of complaints that have been previously filed against employing organizations. Criminal justice research has consistently demonstrated that the criminal history of an offender is an important determinant of criminal justice outcomes. Simply put, Black (1976) argues that a defendant's prior criminal record may be considered an indicator of "respectability." Our respectability measure is constructed from the number of previous complaints that have been filed against a respondent. Drawing from Black, we hypothesize that a company facing a complaint of sexual harassment with no previous history of complaints should be perceived as more "respectable" than a company with a number of previous complaints.[9]

In addition, Black argues that law varies inversely with other social control. Because employment discrimination complaints often target the employer, the structure of the employing organization may also be important in understanding the outcome of complaints. For example, Dobbin and Sutton (1998) found that large organizations in the United States are more likely to install affirmative action, benefits, and other human resource-related divisions. The presence of these offices may imply some type of policy and/or procedure for dealing with sexual harassment complaints and, consequently, complainants may be more likely to have available mechanisms for social control in the work environment. To consider the effect of other social controls, then, we include two measures that capture the size and the profitability of the organization. For private companies, this information was gathered from the *Key Business Indicators* publications for the appropriate years. For government departments and Crown Corporations, we used Statistics Canada publications for the appropriate years. Because of the skewed nature of these variables, both size and annual sales were converted to the natural logarithm as shown in Table 2. Drawing from Dobbin and Sutton's (1998) research, we hypothesize that these two variables—size and annual sales—may act as proxies for the existence of human resource departments and/or sexual harassment policies.

DOES OFFENSE SERIOUSNESS MATTER?

Offense seriousness or harm caused by an act is not in and of itself important in Black's theory, but he does require that "all else be equal" when examining how his key concepts predict the behavior of law. Therefore, types and severity of behavior still need to be controlled in analyses that seek to isolate the effects of Black's dimensions (Cooney 2002). To control for the behavior of the parties involved, then, we measure offense seriousness using three variables as shown in Table 2. Drawing from criminal justice research, we also allow for the possibility that these three measures contribute to the degree of harm perceived to result from the sexual harassment behavior as well as its consequences for the

complainant. Below, we describe the relevance of these three variables in sexual harassment cases to underscore the importance of including them as control variables in our analysis.

Type of Harassment

Previous research examining sexual harassment complaints filed in U.S. courts has demonstrated that cases involving severe forms of sexual harassment, such as sexual assault or propositions linked to threats of employment loss, increase the odds of a case being settled favorably for the complainant (Terpstra and Baker 1992; Knapp and Heshizer 2001). To capture the type and severity of sexual harassment behavior, we use a multidimensional measure that reflects the documented finding that sexual harassment tends to involve a number of overlapping behaviors that occur simultaneously.

For example, using latent class analysis (see Welsh 2000; Welsh, Dawson, and Nierobisz 2002), two classes or categories of sexual harassment as experienced by complainants have been identified. The first category—"poisoned environment" harassment—includes gendered comments, sexually derogatory remarks, and/or other actions that create a "sexually charged" workplace environment. For this category, there is a high probability that complaints will mention gender harassment (i.e., derogatory comments about women) as well as a moderate probability of unwanted sexual attention and sexual put-downs or derogation. There is a small probability that complaints will mention requests for relationships and no probability that the complainant will mention quid pro quo behavior—the second category of sexual harassment.

Quid pro quo sexual harassment is different from "poisoned environment" harassment because of both the probability of sexual coercion (quid pro quo behavior) and the high probability of unwanted sexual attention. Also included in this category of complaints are relatively small probabilities of gender harassment, sexual derogation, sexual put-downs, and requests for relationships. Therefore, quid pro quo behavior most closely resemble traditional understandings of sexual harassment, including overtly sexual forms of behavior directed at specific individuals and involving situations where the complainant is expected to cooperate in order to receive promotions, pay raises, or their job.[10]

Psychological Distress

The second measure of offense seriousness captures whether the victim suffered psychological distress or damage because of the harassment. Psychological distress occurred if there was information that the complainant experienced psychological problems, depression, anxiety, and so on, and/or if the complainant took a medical leave because of psychological problems. Because it is possible that some women may have experienced psychological distress and they did not mention it or it was not recorded in the files, this variable represents a conservative measure of whether the experience of psychological distress leads to the settlement of sexual harassment complaints. It is also possible that a positive effect of psychological distress on the type of complaint settlement may be an illustration of how sexual harassment law is gendered. For example, it may signify the

need to produce a psychologically unstable female victim of sexual harassment in order for a sexual harassment complaint to be taken seriously.[11]

Loss of Employment

A final measure of offense seriousness stems from the employment consequences for the victim as a result of the harasser's actions, primarily that the complainant was no longer in the job where the harassment occurred at the time the complaint was filed. The vast majority of women who were not in their jobs had quit, been fired, or were forced to resign. A smaller number were on sick leave, transferred to another position, or were demoted.

Finally, we include one case-processing variable—whether the case was sent to conciliation. We hypothesize that the conciliation process will share some characteristics with the plea-bargaining process within criminal law. Within the Canadian criminal justice system, a guilty plea represents an admission that a defendant committed the crime he/she is charged with and carries with it the defendant's consent to a conviction being entered without trial. During the CHRC complaint process, officials have the option of sending a case to conciliation in an effort to bring about an agreement between the parties involved. This generally occurs in cases in which the investigation found evidence of sexual harassment and where there was some likelihood that the complainant and respondent might reach a settlement. Conciliation, then, represents a form of organizational maintenance in that it may speed up a settlement between the two parties. As well, because cases sent to conciliation are likely those with corroborating evidence of harassment (as may often be the case with guilty pleas in the Canadian court system), this variable may also act as a proxy for the quality of evidence to some degree.[12] In a previous analysis (not shown here), we also found that, as the number of prior complaints against a respondent increases, the greater the likelihood the case would be sent to conciliation.[13]

WHAT FACTORS PREDICT MULTIPLE REMEDIES?

The goal of the multivariate analyses is to determine what factors increase the likelihood that multiple remedies rather than a single remedy will be used to resolve sexual harassment cases that come before the CHRC. We use logistic regression, a multivariate statistical procedure that examines the odds of being in one group compared to another group based on particular characteristics. To estimate the models, we first introduce Black's social location variables followed by the offense seriousness variables and, finally, the case-processing variable—conciliation. Separate models are presented for employing organizations and individual respondents because we expect that some factors may be weighted differently depending on the type of respondent.[14]

Multivariate Results for Employing Organizations

With respect to employing organizations, Model 1 shown in Table 3 demonstrates that the CHRC was more likely to impose multiple remedies in cases that involved

TABLE 3. Logit Estimates of the Effects of the Social Location, Offense Seriousness, and Case Processing Variables on Outcomes in Settled Sexual Harassment Cases, Canadian Human Rights Commission, Employing Organizations, Female Complainants (N = 144)

	Model 1	Model 2	Model 3
Social Location Variables			
Stratification/morphology			
Harasser in position of authority	−.86 (.55)	−.83 (.56)	−.93 (.58)
Complainant temporary or on probation	.16 (.53)	.28 (.54)	.62 (.58)
Organization			
Multiple alleged harassers	−.24 (.48)	−.18 (.50)	−.22 (.52)
Multiple complainants in case	.13 (.44)	−.30 (.50)	−.60 (.54)
Complainant in high-status occupation	1.52 (.59)*	1.26 (.61)*	1.20 (.63)*
Nonfederal organization	−.11 (.47)	.11 (.51)	.11 (.53)
Culture			
Case between 1984 and 1989	−.56 (.75)	−.65 (.83)	−.77 (.88)
Case between 1990 and 1993	−.57 (.83)	−.68 (.92)	−.30 (.97)
Social control			
Size of organization	−.004 (.09)	.01 (.09)	.02 (.09)
Annual sales of organization	−.10 (.07)	−.11 (.07)	−.12 (.08)
Prior complaints	−.02 (.06)	−.04 (.06)	−.07 (.06)
Offense Seriousness Variables			
Harassment: Quid pro quo behavior		−.16 (.45)	−.10 (.46)
Psychological distress experienced		.32 (.44)	.63 (.48)
Complainant no longer in job		−1.01 (.52)*	−1.26 (.55)*
Case Processing Variable			
Case sent to conciliation			1.37 (.50)**
Constant	3.31 (1.57)	4.15 (1.74)	3.87 (1.84)
Adjusted R-Square	.127	.155	.206

*p < .05, **p < .01.

complainants who were in high-status occupations compared to those who were in low-status occupations. Consistent with Black's theory of law, then, complainants whose social location was higher appear more likely to attract law than complainants whose social location was lower. When the set of predictors that capture offense seriousness was introduced in Model 2, only one was found to be significantly associated with the outcome variable: Cases that involve complainants who were no longer in the job where the alleged harassment occurred were less likely to have multiple remedies imposed; in short, single remedies were more common for these complainants. The effect of high-status occupations remains significant. In the final model, when the case-processing variable was entered, previous significant associations remained and results showed that cases sent to conciliation were also significantly more likely to result in multiple remedies rather than a single remedy.

Multivariate Results for Individual Respondents

Because we hypothesized that individual and employing organizations may be treated differently, in this section, we examine what factors predict whether multiple remedies were imposed in cases that involved individual respondents. Looking first at Model 1 in Table 4, we see that none of the social location variables were associated with the number of remedies imposed in these cases. However, in Model 2, when the offense seriousness variables were entered, one variable was significant—whether the complainant experienced psychological distress. This relationship is in the opposite direction than hypothesized, however; that is, those cases that involved complainants who had experienced psychological distress were less likely to result in multiple remedies (i.e., more law) than those who had not experienced this type of distress. We come back to this finding in the discussion section.

In Model 3, when the effects of conciliation were controlled, the role played by the social location variables and the offense seriousness indicators became more apparent. First, if there were multiple complainants rather than a single complainant, the CHRC

TABLE 4. Logit Estimates of the Effects of the Social Location, Offense Seriousness, and Case Processing Variables on Outcomes in Settled Sexual Harassment Cases, Canadian Human Rights Commission, Individual Respondents, Female Complainants (N = 91)

	Model 1	Model 2	Model 3
Social Location Variables			
Stratification/morphology			
Harasser in position of authority	−.23 (.71)	−.83 (.82)	−.56 (.90)
Complainant temporary or on probation	.05 (.86)	.99 (1.00)	.99 (1.09)
Organization			
Multiple alleged harassers	−.02 (.72)	1.08 (.91)	1.51 (1.15)
Multiple complainants in case	1.13 (.87)	1.29 (.92)	2.22 (1.25)*
Complainant in high-status occupation	.80 (.84)	1.17 (.96)	1.92 (1.13)*
Nonfederal organization	−.99 (.82)	−.82 (.84)	−.87 (.95)
Social control			
Size of organization	−.35 (.21)	−.27 (.19)	−.39 (.22)*
Annual sales of organization	.22 (.19)	.16 (.16)	.16 (.18)
Prior complaints	.04 (.09)	.05 (.11)	.08 (.12)
Offense Seriousness Variables			
Harassment: Quid pro quo behavior		1.23 (.79)	1.83 (.99)*
Psychological distress experienced		−1.61 (.75)**	−1.86 (.85)**
Complainant no longer in job		−.54 (.89)	−.36 (.99)
Case Processing Variable			
Case sent to conciliation			2.58 (.96)***
Constant	−1.31 (2.62)	−.56 (2.76)	−.84 (3.29)
Adjusted R-Square	.179	.257	.357

*p < .10, **p < .05, ***p < .01.

was more than twice as likely to impose multiple remedies rather than a single remedy, supporting Black's theory. In addition, if the complainant was in a high-status rather than a low-status job, multiple remedies were also more likely to result, similar to the outcome for employing organizations, again supporting Black's theory. Also, providing some support for his theory was the role of organizational size—one of the proxies that we argued may indicate that there are other types of social control available. In addition to the role of psychological distress which remained significant in this model, Model 3 demonstrates that quid pro quo behaviors were also more likely than "poisoned environment" behavior to result in multiple remedy solutions in cases involving individual respondents. Finally, multiple remedies were more than twice as likely if conciliation was part of the resolution process than if no conciliation mechanism was used.

DISCUSSION AND CONCLUSION

Decision-making bodies such as the CHRC and the U.S. Equal Employment Opportunities Commission play a crucial role in women's attempts to deal with sexual harassment in the workplace. Yet, research in this area has only begun to draw from insights developed in sociological studies of the criminal law process. Toward this end, drawing from Black's theory of the behavior of law, the primary goal of this article was to determine what characteristics of the complaint, the respondent, and the complainant predicted the quantity of law captured by the number of remedies that resulted in sexual harassment cases. As part of this, in response to Wong's (1998) criticism of Black's theory, we wanted to assess the utility of the theory of the behavior of law in a quasi-judicial setting that represents "more or less government." As mentioned above, most previous empirical tests of Black's theory have focused on the criminal justice system or penal forms of social control. Sexual harassment cases, in contrast, represent more conciliatory or compensatory types of social control imposed in this study by the CHRC, a semiprivate decision-making body sponsored by the state.

With respect to the first goal, then, what can we conclude about factors that predict whether single or multiple remedies are imposed in sexual harassment cases? For both individual respondents and employing organizations, what appears to play the most integral role in the outcome of these cases is whether the case was sent to conciliation—a process that we hypothesize is akin to the plea-bargaining process within the Canadian criminal justice system. Recall we noted that cases sent to conciliation often showed some evidence of sexual harassment as determined by the investigation and often held some indication that the complainant and respondent might reach a settlement. Because cases sent to conciliation are also often those with corroborating evidence of harassment, we noted that this variable might also act as a proxy for the quality of evidence. As a result, it appears there are various reasons to expect this variable to be associated with case outcomes. Regardless, this finding is important given that the increased use of systemic and multiple remedies can alter the culture of the workplace in a positive manner by requiring employers to reevaluate their sexual harassment policies, to provide training to their employees, and to post formal apologies for the harassment. Therefore, if conciliation

occurs—a situation that can be determined by the CHRC—and this leads to better outcomes for those involved, this mechanism should be emphasized early in the investigation process.

While conciliation does play a key role that warrants further research, several other variables also predicted more, rather than less, law in sexual harassment case outcomes. First, providing some support for Black's theory of organization, we found that if complainants were in high-status occupations or if cases involved more than one complainant, multiple rather than single remedies were more likely to result in both corporate and individual respondent cases. The size of the organization was also important, providing some support for the social location variables. To recap, Black argues that the quantity of law should vary inversely with other social control and previous research has shown that large organizations in the United States are more likely to have other social controls as represented by affirmative action, benefits, and other human resource-related divisions (Dobbin and Sutton 1998). Consistent with this, our analysis demonstrated that, as the size of the organization increased, the likelihood that multiple remedies would result decreased, supporting the notion of an inverse relationship between law and other social control. However, this finding requires further research that examines in more detail the differences in social controls that exist within organizations of various sizes.

With respect to the offense seriousness variables, all three were significantly related to outcomes for employing organizations or individual respondents, although not always in the expected direction. For example, for individual respondents, where complainants experienced psychological distress because of the harassment, the CHRC was less likely to impose multiple remedies. This finding is in contrast to what was expected because we hypothesized that the existence of psychological effects from the harassment would increase offense seriousness. However, the fact that this type of harm actually led to fewer remedies needs to be examined further before anything but speculative explanations can be offered. In addition, we have acknowledged that our measure of psychological distress was conservative in that we only coded the presence of such distress if clearly noted in the case file. It may be that better measures of this variable are required before conclusions can be reached about the role played by psychological distress in the resolution of these cases.

Because this study represents a preliminary and exploratory investigation into the resolution of sexual harassment cases, it poses more questions than it answers. And, while our sample includes all cases resolved by the CHRC during the study period, numbers remain small and preclude further analysis of potentially important relationships. For example, while we found that complainants in high-status occupations were more likely to receive multiple remedies in their cases, it would be important to determine how stratification affects this association. For example, are complainants in high-status occupations more likely to be subject to harassment by coworkers than supervisors or managers and, if so, how does this affect their ability to organize? How does this affect outcomes in their cases? In short, how do indicators of stratification and organization interact to produce outcomes in sexual harassment cases? Studies incorporating larger samples are required to address these questions.

Moreover, while it is important to determine the quantity of law (multiple versus single remedies), we also need to understand what factors predict the type of law (or the type of remedies) that are imposed in particular cases and why? What type of remedy is most common? Does this vary by type of complainants and respondents? Are certain types of cases more likely to result in monetary settlements than others? Finally, there is a dearth of research examining the satisfaction levels of complainants and/or respondents with the outcomes or remedies used to respond to cases or the impact such outcomes have on workplace environments as a whole. In short, multiple remedies do not necessarily mean complainant satisfaction.

With respect to our secondary goal, while some support was found for Black's theory, many of the variables that captured the five social structural dimensions were not significantly related to the quantity of law used in these cases. This appears to offer some support for Wong's (1998) argument. However, while Wong (1998) argued that Black's theory was not sufficient when examining "more or less governmental social control," neither were some of the variables that measured offense seriousness—variables traditionally perceived to be important when predicting outcomes in criminal cases. It may be, then, that the resolution of cases in quasi-judicial settings or where there is "more or less governmental social control" requires a greater emphasis on the nature of the process—as indicated by the consistent role of conciliation in the resolution of sexual harassment cases—rather than on the characteristics of the cases themselves, an avenue for future research.

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NOTES

[1]According to the theory of the behavior of law, there are four styles of social control: penal, compensatory, conciliatory, and therapeutic social controls.

[2]Within criminal justice research, however, offense seriousness (i.e., weapon use, physical injury, property loss, and sexual assault) has traditionally been viewed as a key predictor of legal outcomes.

[3]Crown Corporations are quasi-public corporations akin to federal government departments but with more financial and administrative autonomy. Examples of such corporations include Canada Post (mail delivery), VIA Rail (passenger train), and Canadian National (freight train).

[4]The Canadian Human Rights Act was passed in 1977 and the CHRC began its work one year later. The first sexual harassment complaint was accepted in 1978 and our data cover the first

complaint and all complaints that came after and were closed in 1995 when data collection took place.

[5]In total, there were 637 sexual harassment cases filed with the CHRC during the study period, including those cases that were eventually dismissed and those that were withdrawn (usually as a result of a private settlement). If the complainant and the respondent reached a private settlement that resulted in complaint withdrawal, these cases were not included in our analysis because we focus on the remedies used by the CHRC in its formal capacity. In short, cases analyzed include only those for which there is a CHRC record of settlement.

[6]See Section 2 of the CHRA.

[7]In 1985, the Supreme Court of Canada in *Robichaud* also ruled that employers were liable for sexual harassment on the part of employees. We use the 1984 Human Rights Tribunal date as our cut-off year because this is the date when the CHRC began to hold employers liable (Charles Theroux 1997, personal communication).

[8]Since the 1989 Canadian Supreme Court decision in *Janzen v. Platy*, harassment victims do not need to prove the loss of job-related rewards in order to show that harassment occurred. Rather, a broad understanding of the "invasion of sexual conduct into the workplace" becomes the litmus test by which harassment complaints are judged.

[9]To capture the respectability of an organization, cases in which the company had only one complaint recorded for the entire study period were coded as 0. Those cases in which a company had more than one complaint filed against them during the study period were assigned values according to the number of cases that had preceded the case in question. For example, if there were three sexual harassment cases recorded for one organization during the study period, and the case in question was the most recent, that case was assigned a value of 2 on the "respectability" measure (i.e., two complaints prior to the current one).

[10]See Welsh (2000) for probabilities and the full latent class results.

[11]According to Smart, this is how the law develops "identities to which the individual becomes tied or associated" (1995:192). On the one hand, this image may help settle a sexual harassment complaint, but it also provides a gendered image of harassment victims that may be used against them. So, while we use the measure of psychological distress, we acknowledge that this occurs within a context of gendered processes in law.

[12]Frideres and Reeves' (1989) analysis of complaints to the CHRC found that individual discrimination complaints, such as racial and sexual harassment, contained less formal evidence, accounts of informal incidents, and relied primarily on the testimony of witnesses. The evidence available in these types of complaints is hampered in that the CHRC cannot subpoena or cross-examine witnesses. In terms of data collection, coding data on the evidence in each case was limited in that the CHRC does not have standard reporting procedures for evidence. Some complaints contained a complete investigation report whereas others contained only the initial complaint and the CHRC decision. We tried numerous measures of evidence, such as the existence of witnesses. Over 50 percent of the cases for each of these variables had missing data. None of these variables were significant. Analyses are available from the authors upon request.

[13]Again, this may be similar to the plea-bargaining process: If strong evidence is available in a criminal case or if the defendant has a criminal history, it may be in the best interests of the defendant to make a deal.

[14]Due to small sample sizes, we include relationships that are significant at the .10 level in the second analysis on individual respondents. In addition, while not shown here, we examined the correlation coefficients among the variables for evidence of multicollinearity, but no high correlations were noted.

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