

Sexual Harassment Complaint Dismissed Because 'Victim' Participated in Conduct



A retail worker sued her employer for sexual harassment based on several highly sexualized comments directed towards her by co-workers. The employer argued that in each store where she worked, a culture had developed in which sexually explicit banter, jokes and innuendo were considered reasonable. And the worker not only tolerated sexual banter and conduct without objection but also actively and willingly participated in such conduct. The Tribunal dismissed her complaint, explaining that the Supreme Court of Canada defined sexual harassment as '*unwelcome* conduct of a sexual nature.' So the issue was whether a reasonable person would know that the conduct in question wasn't welcomed by the worker. Here, the Tribunal concluded that there was no reasonable prospect she would succeed in proving that the conduct in her allegations was unwelcome given the degree of her participation in such behavior [*Kafer v. Sleep Country Canada*, [2013] BCHRT 289, Dec. 3, 2013].