

Finding Dianna Janzen: The historic fight against sexual harassment in Canada

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For years I wondered what happened to the two women who merely wanted to put an end to the behaviour of a lecherous cook and ended up at the Supreme Court of Canada defining sexual harassment. In 2009 on the 20th anniversary of the Supreme Court's decision about sexual harassment, I interviewed the initial adjudicator, renowned Winnipeg lawyer and human rights expert, Yude Henteleff. At the end of the article, I wrote, "If anyone knows the whereabouts of Dianna Janzen and Tracey Govereau, please let me know." To my surprise, a few months ago, I got an email from a Dianna just saying "thanks."

I called her back and sure enough it was one of the two women who made such a difference in Canadian law because they had the courage to speak up and fight...through many legal battles and more than six years.

May 4th is the 22nd anniversary of this historic decision and Dianna Janzen was gracious enough to record an interview with me for an hour. You can download and listen to the MP3 interview by clicking on the link at the bottom of the article.

In August 1982, on the recommendation of a friend, Dianna Janzen left one waitressing job to work at Pharos Restaurant on St. Mary's Road, just East of the Red River in Winnipeg. While taking a full course load at University, Janzen hoped to work full time so she could live on her own and pay for school.

Early on, the cook Tommy Grammas began grabbing her and making sexual advances towards her. After almost 29 years, Ms. Janzen still has a hard time discussing the actions of that cook. "Well, I think that's detailed well enough in the court documents so I'd prefer not to detail that right now," she said.

In fact when I read the case years ago, and when I think of a sexual harassment scale of 1 to 10, I put the actions of Tommy Grammas in the 9 to 11 category.

Janzen made it clear "in no uncertain terms" that his actions weren't appreciated and tried to deal with it on her own. When after a month of futile attempts with Grammas, she spoke to the owner who hired her, Phillip Anastasiadis. "Phillip's immediate reaction to my complaint was 'you need a fuck anyways,'" said Janzen.

That's when she started to doubt herself. "My feeling at that point was oh my gosh, there really is something wrong with me, that I'd be so bothered by what was happening. So I held my ground with the cook. I let him know that I wasn't interested and I just wanted to do my work, but I felt that at every turn I was being sabotaged and not being able to perform my duties."

Janzen felt the same way many women felt when they don't get support and therefore doubt themselves. For a long time, even after the case was long settled, she wondered... She thought, "If I'd only done things differently. If I hadn't worn that skirt, or if I hadn't smiled that way, or if I hadn't been so trusting. If I had been different or smarter none of this would have happened. And I did blame myself."

But she needed a job and felt an obligation to the person who got her the interview in the first place. In the end she quit, something she says she would have done much sooner, with the advantage of more years of wisdom.

I asked Janzen why she didn't leave sooner? She said, "Because I was naïve, because I was young, because I was stupid, because I was putting up with a lot of stuff, because I didn't know my own rights. I did know that I had a right to my own body, I have a right to my own thoughts, I have a right to work without being harassed like that and I thought that if I could put a stop to it, that I could still continue in this job that I thought was ideal for my situation at that time. Unfortunately that didn't happen." So with a little more than two months at Pharos, she left.

Sexual harassment was, and still is prevalent in many workplaces in Canada, but very few people are willing to take the simple step of picking up the phone to contact their human rights commission or tribunal. Yet this woman did. And strangely enough, so did her fellow Pharos waitress, Tracy Govereau.

At that point Janzen and Govereau hardly knew one another as their work only overlapped by about two weeks. Govereau started her job on October 13th and Janzen quit on the 31st. Govereau encountered similar harassing behaviour from Grammas and when she spoke up, he and Anastasiadis began yelling at her in front of other staff. They used the excuse of an alleged customer complaint and Govereau's last shift was December 11th.

When Janzen filed her complaint at the Manitoba Human Rights Commission, she was told, to her surprise, that Govereau had done the same thing and would she mind if they combined the cases, to give it more strength.

About their relationship, Janzen said, "I didn't know Tracy very well at all. We worked together for a very very short time and in that time I was pretty self-absorbed in terms of just getting through my shifts." Despite all they went through, after the appeals were all done, she only ran into Govereau once on the street, never seeing her again.

Not every case is clear cut, but their case was about as classic as they come. The damages they were awarded doesn't seem like a lot today, but at the time it was considered ground-breaking. For loss of pay and exemplary damages, the company was to pay Janzen \$3,980. For Govereau, it was \$6,000, as she was out of work longer. According to adjudicator Henteleff, "I quite deliberately made them large and it caught the media's attention. I didn't exaggerate the damages, but I wanted to make people aware of the psychological damage involved with sexual harassment and that it will cost [employers] lots."

But to her dismay, Pharos appealed. While the Court of Queen's Bench judge Michel Monnin (now on Manitoba's Court of Appeal) agreed with the adjudicator's decision, he knocked the awards down to just \$1,480 for Janzen and \$2,000 for Govereau.

In response to that decision Pharos appealed, saying they shouldn't be legally responsible, while Janzen and Govereau cross-appealed, feeling the original damages should be restored. When it got to Manitoba's top court, two prominent judges, Justices Charles Huband and Kerr Twaddle (now both retired) came down with a decision that surprised many.

As far as Huband was concerned, he was "amazed" that an employer would be responsible for the actions of their employees and also "amazed" that sexual harassment could be considered discrimination based on sex. Twaddle drew very distinct and exact legal lines in the sand, referring to "sex appeal" and "random selection", but basically he summed it up by writing, "it is nonsense to say that harassment is discrimination."

Their ruling was in complete contrast to numerous Canadian courts, including two top courts from other provinces. Huband and Twaddle ruled that sexual harassment is not a form of sex discrimination, and therefore not a violation of Manitoba law. They also said the restaurant cannot be responsible for the actions of their lecherous cook. At that point it seemed their fight was over.

Asked about her feelings after that decision, Janzen replied, "It told me that it had all been for nothing."

It was an emotional rollercoaster and with the reduction of the award and then having her case completely dismissed, Janzen was of two minds. On the one hand she said, "It didn't take long before I felt that it was a blessing in disguise because I don't know that there was any other way for it to go forward to the Supreme Court except through appealing the decision." And even though she had doubts about her own actions, she realized how out of touch these judges were. She said, "I think one of the judges in his statement had actually compared what I had gone through to a boy pulling my pigtails in the classroom and I thought he just doesn't know."

"Yes I was a waitress and yes it's considered a lower level job, but I'm not stupid, and I'm trying to interpret their judgment and to me it was ridiculous." By this time, more than four years had passed since Janzen quit her waitressing job. But onward she, Govereau, the Human Rights Commission and the Women's Legal Education and Action Fund (LEAF) went to the Supreme Court of Canada.

On May 4, 1989, almost seven years after she first began work at Pharos, Dianna Janzen and Tracy Govereau were told by the Supreme Court of Canada that: yes, they were sexually harassed; yes, sexual harassment is a form of sex discrimination (and therefore illegal); and yes, employers are responsible for the actions of their employees. But more than that, the Court gave employers and employees a definition of sexual harassment that is very liberal, not restrictive and has been instrumental – all these years since – in capturing more and more behaviours as unwelcome and against the law. It has stood the test of time even 22 years later.

So how did she feel?

"I didn't feel anything, actually at first. It was just taking it in that it was done. The real impact didn't strike me until it was explained to me what this meant for my children, for the neighbourhood kids, for people who are in the same situation that I was in."

"I did what I thought needed to be done. And looking back maybe there was a little bit more fight in me than I thought. It's nice to have been able to accomplish something like this or been a part of it because I didn't accomplish it alone."

In fact Janzen is grateful to a wide variety of people, from the staff of the Manitoba Human Rights Commission, to the lawyers taking the case, to LEAF, who didn't have to keep her informed or involved when it went to the Supreme Court, but did. And while one might think some in the hospitality industry wouldn't appreciate all the bad publicity, Janzen is eternally grateful to the employer who told her to "go for the throat".

Before going to Pharos, Janzen waited tables for another restaurant in a hotel and left on good terms. Pharos was closer to home and school and there was a promise of more hours – something she needed to pay for school. However, a month after she left Pharos, she got a job with her previous employer. As soon as a position came up, they were glad to have her back. Her boss said the treatment she received at Pharos was "bad business and bad for the industry" and they encouraged her to go to the Manitoba Human Rights Commission. And when she was going through all the legal process, they accommodated her by moving around her shifts.

But she didn't get all the support she was hoping for. After all these years I could still hear the disappointment she felt for those who didn't - or felt they couldn't - help her. While there was one other waitress who testified about the working conditions, others didn't come forward. Janzen says other women were in similar situations but they couldn't afford to lose their jobs, something that is often lost when people forget how vulnerable some employees are...even in Canada with all our laws.

But it was others close to her that seemed to disappoint her the most. "Surprisingly there were family and friends who didn't agree with what I was doing or understand it. A lot of time has gone by; a lot of bridges have been mended since that time. Some not, but it took its toll on a lot of levels," Janzen said.

As a result she said, "there was a feeling of aloneness and failure." And when she got phone calls from people she knew or even strangers, telling her to "step down", she unplugged her phone, which she said, "added to a sense of isolation." After all, this was a time before call display.

Despite all the pressures, isolation and self-doubt, Janzen's determination to fight all the way, led to better opportunities for other Canadian women who find themselves in similar situations. And keep in mind, this all started just because she didn't want to be groped and abused at her job. She knows it wasn't her fight alone, and not just her co-worker Tracy Govereau. But she's still so modest, it's important to hear what others had to say about her and Govereau.

Yude Henteleff, the adjudicator who originally ruled on their case and was vindicated for his decision by Canada's Supreme Court, finds the legal process daunting and too legalistic. When I spoke to him two years ago he found Janzen and Govereau "very courageous" for advancing a claim involving a difficult process.

And while he never met either woman as he took the case for the Commission to the Supreme Court of Canada, Aaron Berg, (now Senior Counsel for the Manitoba government) told me that what Janzen and Govereau did was quite significant. Up until that time, sexual harassment was not completely defined and the application of the law was uncertain. Berg said, "When these women came forward, what they did was they gave Manitoba an opportunity to address this under its' Human Rights Act and then when they ran into difficulties at the Court of Appeal, it gave a wonderful opportunity to clarify the law, basically for the entire country."

"It was the first Supreme Court decision on this that adopted an approach that human rights proponents had been pushing for some time....the impact on people across the country since 1989 has been profound," said Berg.

He spoke of the psychological and emotional toll it takes on anyone going through this process and he hoped these women were able to look at the broad picture of "how much good they did by complaining when they did."

"The impact that Dianna Janzen had on human rights in this country can never be underestimated," said Dianna Scarth, Executive Director of the Manitoba Human Rights Commission. "She showed how one person filing a complaint can benefit hundreds of thousands of people."

And while Janzen endured so much over all those years, she's hardly told anyone about her fight. So I asked her, why now?

"I turn 50 this year"

"At 21 I was a failure and a victim. I'm not that anymore. I'm successful. I've achieved something with my life beyond the Supreme Court decision, and maybe even because of it."

"I did get my happily ever after. I'm happy. It was a long road that took its toll. I laughed more than I cried and made more good choices than bad choices." She's finishing a course she long wanted to take, has a fabulous employer, married a wonderful guy & raised two kids with him, now in their late teens. 50 was a good year to start stepping up.

In particular, she wants to tell her story, especially to the young people who are still so vulnerable and in many ways are still enduring the kind of abuse she endured. Not all of the abuse is related to sexual harassment, as she has observed. "I am amazed that the public can be so incredibly abusive to waitresses. In fact in the years since that time, I am amazed at the pressures the public will put on the service industry."

While Janzen realizes there is more information and many people tend to know their rights, she wonders if things have changed all that much.

Over the years of talking to Canadians about sexual harassment and discrimination, I still hear comments that Janzen said she felt an entire generation ago. Janzen said, "I think of how much self-doubt I had leading to me staying there longer than at this point in my life I think I ever would have because I felt responsible at the time. I felt there was something different that I could be doing. That somehow I brought that on myself. I guess it's just a victim mindset."

So she encourages people to do what they know they should do. "My best advice is to trust yourself...One of the things that really freak me out is when I hear people say the words, 'I don't have any choice'. There's always a choice even if you don't see it. I want them to know they don't have to be afraid whatever choice they make, it's going to be the right one for them. If they're choosing to quit a job, there are ways to find support, to deal with their situation."

Janzen eloquently lists off the things, people should do, but are often reluctant to do, such as speaking to the person harassing you and if that doesn't work, speak to someone in charge. Many times there will be a good outcome, but because we all know of those times when things don't go right – like at Pharos for Janzen and Govereau - then people can look for external help, such as a human rights commission. And if Canadian employees are part of a bargaining unit, they can seek help from union representative.

Many people wonder about the money. Because our courts say the human rights process is a remedial one, and not a punitive one, Canadian awards are usually tiny compared to awards in the more litigious United States. Despite the small awards, many people still think it's a cash grab. Others see the small amounts people are awarded and wonder why did they bother at all?

When I asked her about the financial award of \$3,980 (plus interest) and said some people think it's all about the money, Janzen laughed, saying, "it was so not about the money." In fact when the process was all said and done, she got a call from someone saying the clock is ticking for her to go after the money and she declined.

"The win was the win and that's all that mattered. The dollars attached to it were irrelevant and in terms of what it represented, it's curious to me that anybody would be successful in trying to put a dollar amount to it. And the other point is that it was an award and it wasn't a reality. I've never seen a penny of that. It was to make a point. It wasn't to be punitive. And I think it did make a point." In response to some people thinking these cases are windfalls for people going through the process, Janzen replied, "the windfall was the supreme court decision."

Canadian women, in particular, have Dianna Janzen and Tracy Govereau to thank for stepping up when so few were willing to do the same. They are an example of what an arduous process it can be to fight the indignity of trying to do a job when an employee is sexually harassing them. But thanks to their willingness to fight, against all odds, the laws are now in place. I don't mind saying these women are two of my heroes.

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<http://www.stephenhammond.ca/dianna-janzen.php#>