

# HILL ADVISORY NEWS

*“Working with the human side of business”*

## ...“ **SPLIT** ”... Decisions on Employer Liability



*Can an Employer be held liable even if they have taken “reasonable steps” to prevent sexual harassment?? Two recent decisions in two separate provinces reach ..... two different conclusions .....*

*Two female employees (one in Ontario and the other in B.C.) were targets of sexist washroom graffiti and both submitted grievances. Both the Ontario and B.C. employers had taken “reasonable steps” to prevent and remedy sexual harassment - however there were conflicting decisions as to their liability.*

### Ontario Decision

- \* Relying on a previous decision made by the Supreme Court of Canada (in the case of *Robichaud v. Canada*), an Ontario Arbitrator ruled that employers bear a responsibility to ensure that the workplace is free of sexual harassment - and can be held liable for the actions of their employees.
- \* However, the Arbitrator concluded that an employer will not be held liable if they can demonstrate that they have taken precautions to prevent sexist conduct - and are not directly involved in actions over which they have little or no real control. There must be proof of laxity or indifference on the part of the employer creating a poisoned atmosphere.
- \* Over the years the company had undertaken a number of initiatives to sensitize employees to the issues of sexual harassment and to improve the workplace for female employees ..... the grievance was therefore denied.

\* \* \* \* \*

### B.C. Decision

- \* The B.C. Human Rights Council determined that even though the employer took “reasonable steps” to prevent and remedy sexual harassment - they may still be found liable.
- \* The Council rejected the company’s argument that the *Robichaud* case suggests that appropriate remedial steps by the employer can erase liability for harm due to sexual harassment. The Council determined that an employer’s response to sexual harassment will reduce liability - only if it actually reduces harm.
- \* As a result ..... the B.C. employer was found liable and ordered to pay compensation for discrimination and injury to feelings, dignity and self-esteem. The company was also required to pay a substantial amount plus interest, for loss of earnings attributable to the discrimination.

\* \* \* \* \*

## Team Success!



*“ Reality is that some teams work very well - others quite poorly. Team success is not guaranteed! ”*

*Guarantee your team’s success by ensuring:*

- \* the task is suited to teamwork
- \* the team is the right size (the smaller the better)
- \* the team has the right “people mix”
- \* the team goals are clear and specific
- \* the team commitment to goals is strong
- \* the team has enough authority, resources and time

**Q. What if a witness in a harassment investigation refuses to co-operate and answer questions?**

- \* As an investigation is an informal process - as opposed to an arbitration hearing, etc. - you do not have the power to force a witness to co-operate with you.
- \* However, if you schedule the witness interview during normal working hours, that witness is compelled to attend. At that point, explain to the witness they may be required to testify at a formal hearing, where they will be subpoenaed.
- \* If they refuse to co-operate at that point, they will be "held in contempt". If they respond in a non-truthful manner, they can be charged with perjury.
- \* Generally having a straightforward conversation about "what that means" assists the witness in deciding to provide information to you. Failing



co-operation, you'll have to proceed with the investigation without that piece of evidence, and report the refusal to co-operate to the employer.

\* \* \* \* \*

**Q. What if there is an immediate reporting relationship between the Complainant and Respondent in a harassment investigation - what should I do?**

- \* Move one or both parties. Try special assignments, other reporting relationships, or leave with pay. A variety of ways can be taken - as long as you remember that your actions should not be seen as having pre-determined the complaint prior to the investigation.

**Q. Is it necessary to hold a harassment investigation interview in private - outside of the workplace?**

- \* Holding interviews outside the workplace helps in a small way with possible backlash in the workplace. Interviews held at work usually are monitored by interested parties.
- \* If a witness is interviewed for two hours, they tend to be questioned as to what they could possibly have talked about for that period of time, etc.
- \* Conducting interviews outside the workplace allows privacy for all witnesses. It allows you to continue with your investigation after normal working hours - if you need to - without worrying about security issues, etc.

### 1998 Public Workshop Schedule

*"Harassment Investigation"* (3 days)  
*"Harassment Resolution"* (2 days)

Sept. 14 - 18	Calgary	AB
Oct. 19 - 23	Moncton	NB
Nov. 23 - 27	Whitehorse	NT



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### Editor's Corner



E-mail the Editor (Donna)  
with your questions, comments,  
suggestions or mailing address changes  
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*Special thanks to the following clients for all their help with various events over the last few months!*

- \* *Bonnie Hilts at SaskPower in Regina for organizing the workplace assessments*
- \* *Claudine Lowry and Michelle Creelman at Nova Scotia Community College in Halifax for coordinating the workshops*
- \* *Louise Seveny at the Canadian Figure Skating Association in Ottawa for organizing the workshops for their Board members and staff*

*We appreciate the special efforts and hard work that went into helping to make our events so successful!*

### On the Move .....



Even though **Cam Hill & Associates** are constantly on the move - you can always get in touch with us!!

- \* *E-mail: [camhill@mbsympatico.ca](mailto:camhill@mbsympatico.ca)*
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or visit us at our web-site .....

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