

HILL ADVISORY NEWS

“Working with the human side of business”



“What would you do if ...”



“This is harassment!”

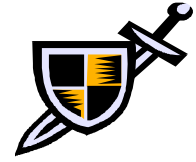
Employee Claims Offensive Questions During Job Interview Constitutes Sexual Harassment !!

Would you agree that asking a job applicant how she would deal with sexual harassment in the workplace is actually a form of sexual harassment itself? Is it appropriate to ask such questions if the applicant has previously been a victim of sexual harassment?

- * Eleanor was dismissed from her position as a construction worker with the Federal government. She subsequently filed several complaints with the Canadian Human Rights Commission and the Public Service Commission. *Eleanor claimed she was a victim of sexual harassment and wrongful dismissal.* She was eventually reinstated to her previous position but continued to find her job situation ‘intolerable.’
- * Eleanor applied for a position as an information officer in a different department and was granted an interview. During Eleanor’s years of conflict with the Public Service regarding her sexual harassment, she became well known to the media. She had approached them on several occasions and repeatedly voiced her concerns about the harassment problems she had experienced. Prior to her interview for the information officer position, an article featuring Eleanor appeared in the local newspaper.
- * *Eleanor was advised at her interview that her history of voicing her complaints against her employer through the media could result in a conflict of interest with her duties as an information officer which was to explain and defend the employer’s position.* The interviewer tried to establish whether, in the future, Eleanor would pursue internal procedures to resolve any complaints or again attempt to make her complaints public through the media. *Eleanor was subsequently asked how she would handle each of the following hypothetical situations.*
- * The first situation described a male co-worker rubbing up against her while she was photocopying some information. Eleanor was asked how she would react to this. She simply responded that perhaps it could just have been an accident and she would not be bothered by it. In the second scenario, the interviewer put forth an incident where Eleanor had made a presentation to a group of senior managers after having invested a great deal of her own time. At the end of the presentation, one of the managers made the remark “You have nice legs.” When asked how she would respond, Eleanor replied that she would assume it was a joke but would personally speak to the individual responsible for making the remark.
- * At the conclusion of the interview, the interviewer decided that Eleanor could be trained to effectively perform the duties of the information officer position However, Eleanor suddenly volunteered the information that she intended to write a book about her past experiences with sexual harassment in the Public Service. At this point the interviewer concluded Eleanor was not interested in the position and merely wished to maintain her freedom to publicly attack government employment policy.
- * *When Eleanor didn’t get the position, she filed a complaint with the Canadian Human Rights Commission alleging that the hypothetical interview questions were - themselves - a form of sexual harassment.* A tribunal rejected her complaint and determined the questions did not constitute harassment. Eleanor appealed this decision. A Human Rights Review Tribunal upheld the decision stating “*Anyone who has been so openly critical of her employer, if applying for an information officer position requiring dealing with the media, could reasonably expect to be asked about possible conflicts of interest.*” Eleanor then appealed to a higher court.
- * The Federal Court of Appeal agreed with the previous ruling that the proper test in law for what constitutes sexual harassment is that of the ‘reasonable woman’ and not the ‘reasonable man.’ It noted that expert evidence suggested “Men and women see harassment differently and that what a man may consider as *normal* interpersonal relations may be viewed by a woman as *threatening.*” *Based on the ‘reasonable woman’ test, the Court stated “The events of the interview would not be perceived by a ‘reasonable woman’ as constituting sexual harassment and therefore did not offend the Canadian Human Rights Act.”*
- * The Court further determined the interview questions would not be offensive even to a ‘reasonable woman’ who was previously a victim of sexual harassment. It stated “Eleanor was ‘*hypersensitive*’ and ‘*emotionally distraught*’ at the time of the interview and she was not perceiving things as a ‘reasonable woman’ or as a ‘reasonable woman’ who was a victim of harassment.” Although the Court questioned the necessity of the two hypothetical questions asked during the interview, it concluded “*It was not for the Court to micromanage the conduct of job interviews as long as that conduct falls short of sexual harassment or otherwise prohibited activity.*” The appeal was therefore denied.



A 'Labour Relations' Tale - or - There is Another Way



- * Once upon a time, in a land not so far away, there was a King whose knights formed a union. They called themselves The Knights of Labour (KOL.)
- * While relations between the King and KOL were generally good, they would occasionally have disagreements over the meaning of some section of the Collective Agreement (i.e. knight shift premium) or the way the King exercised his judgement (i.e. promoting junior knights to mid-knights) or when a knight was disciplined (i.e. for failure to shine armour correctly.) When they weren't able to resolve these disputes through discussion, the KOL was left with the option of going to court or on strike as there was no *Labour Relations Act* in the land. Since neither party thought the strike option made any sense, they usually went to Knight Court.
- * One day, the KOL steward said to the King, "This process has become a *knightmare!* When we go to Court we get our lawyers involved (*yes there were lawyers back then too*) and 3 things happen:
 - (1) It gets expensive for both of us.
 - (2) It takes a long time to resolve. (Any long delay had become known in the kingdom as *'knight time.'*)
 - (3) It becomes a legalistic process where we argue technicalities rather than solve the problem
 and, the expensive decision we eventually get is frequently something neither of us wants."
- * The King agreed and said "What we need is a process that is *faster, better and cheaper.*" The King and the KOL approached Merlin, (a wise man from a neighbouring kingdom) to see if he would agree to help
- * Because Merlin had been a knight and had a royal background, he understood knightly duties and the problems of the monarchy.
- * From time to time the King and the KOL would meet with Merlin, discuss a problem and Merlin would make a decision on how best to resolve it. The parties would go back to the kingdom and implement his decision. This resolved their problems and the parties could get on with the business at hand - jousting, saving people in distress and so on
- * This process continued for many years until Merlin retired and the parties had trouble finding an acceptable replacement. A problem over a complicated legal interpretation of the contract occurred around then and each party talked to their respective legal counsel ... who suggested a neutral lawyer (from another kingdom) to replace Merlin. Because the neutral lawyer didn't know anything about knights or royalty, and the problem was so complex, they decided that he should be assisted in the decision-making process by 2 more people, nominated by each side in the dispute. Now the dispute would be heard by 3 people, with arguments being presented by legal counsel for each side.
- * Some things certain to result from this process were:
 - (1) It would be expensive.
 - (2) It would take a long time to resolve.
 - (3) It would become legalistic.
- * Although the King and the KOL disliked this process they were unable to agree on how to get back to *'the good old days'* and so they all lived *'unhappily ever after except for the arbitrators and counsel.'*

** From the desk of Bob Pruden, Associate **



Thank



to the following clients for all their help over the last few months!

- * Shannon Harnott (City of Saskatoon) for arranging the Harassment Awareness and Prevention semi-annual training sessions for new employees in September.
- * Dave Jennings (Agrim) in Vanscoy, Saskatchewan for organizing the Harassment Awareness and Prevention training for staff in September, October and November.
- * Meryl Guymer in Flin Flon for arranging our visit to the Women's Safe Haven Resources Centre last October. We appreciated the invitation.
- * Pam Coburn (Skate Canada) in Ottawa for coordinating the November Dispute Resolution Workshop for employees and volunteers.
- * All our participants who helped to make our public Harassment Investigation workshops (Level I and II) held last November in Fredericton such a success!
- * Fred Atkins (Keyano College) in Fort McMurray for arranging the Harassment Awareness and Prevention and Dispute Intervention training session for staff in November.
- * Debi Kalinin (Syncrude) in Fort McMurray for coordinating the Awareness and Prevention/Harassment and Discrimination training for Syncrude Leaders in November and December.
- * Lily Chow and Julia Kwan (Bow Valley Collegiate) in Calgary for organizing the Harassment Investigation workshop for employees in December.



**Yuletide
Greetings**

From the desk of
Cam Hill, President



This year has seen many of us involved in turmoil or conflict on an international level - on a business level - and on a personal level. It is my wish for you that as the year closes and a new one begins that it brings to you

'beginnings of joy-filled days, of peace-filled nights and time to spend mindful moments with special people in your life'

All of us at Hill Advisory Services wish you a joyful holiday season, surrounded by people and events that nurture and support you.

We'll be in touch in 2002!

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