

# HILL ADVISORY NEWS

*“Working with the human side of business”*

**TIME'S  
RUNNING  
OUT....**

## Employer's 'delayed' Response to Racial Harassment Complaint Violates Human Rights Code !!



*Did the Employer take 'prompt and timely' steps to eliminate racial harassment and workplace discrimination ? .....*

- \* Elston worked as an attendant for an organization that provided personal care and housekeeping services to physically challenged individuals. Robbie was a resident at the personal care home for many years and had been warned by the employer on several occasions regarding his unacceptable behaviour toward employees, staff and management. Repeated incidents of racial slurs, harassing telephone calls and verbal abuse were documented. Robbie had also been reprimanded for breaching various terms of the service contract with the employer.
- \* One day Elston went to assist Robbie and asked him for a pair of rubber gloves before attending to him. Robbie said he had no gloves. Since it was Robbie's responsibility to provide gloves, Elston told him he was leaving and would return once Robbie obtained gloves. At this point Robbie made a vulgar racial slur and added "Where did you get your brain - a banana boat?" Elston returned to the employee lounge and filled out an incident report ..... He asked the employer "To take urgent action and intervene in this racial harassing and discriminating situation."
- \* Elston's employer indicated to him there would be an internal investigation. Elston continued to provide services to Robbie. The employer issued Robbie a letter stating "An immediate improvement in your behaviour is required at this time. A repeat of these inappropriate actions may result in reconsideration of your service contract and/or a suspension of services."
- \* One week after the racial slur incident, Elston visited Robbie who had ordered medium-sized gloves. Elston suggested he should also order large ones to accommodate the various hand sizes of the personal care attendants. Robbie then became upset and mumbled "I don't want any Jamaican looking after me - get out!" He called Elston's supervisor and stated he no longer wanted to receive care from Elston.
- \* *Elston perceived this as racially motivated but believed that the company investigation would resolve the issue.*
- \* Elston continued to check with his employer to see what progress had been made with the investigation. After 3 months with no response, he asked his employer to meet with him and a union rep to discuss the situation.
- \* After the meeting, Elston filed a grievance stating "The employer had failed to take the appropriate steps in a timely manner to deal with the racial harassment and discrimination incident." He also filed a human rights complaint alleging "The employer's failure to deal with the situation had adversely affected his working environment." .....
- \* The arbitrator stated there was no dispute Elston had been subjected to racist comments or that Robbie had engaged in a pattern of racial harassment and discrimination. *The issue was the timing and effectiveness of the employer's response to Elston's complaint, which the union alleged was inadequate and contrary to both the Collective Agreement and the Ontario Human Rights Code.*
- \* Arbitrators, tribunals and courts have held that while some workplaces may be more difficult to manage than others, *the employer is not relieved of its obligation to take prompt and effective action to maintain a work environment free from harassment and discrimination.* "When a complaint of racial harassment is received by an employer, whether the harassment is alleged to have originated from an employee or a third party ..... the employer must respond 'promptly and effectively' with a thorough investigation and corrective action, as well as have consideration for a sensitivity of the needs of the workers at whom the alleged harassment was aimed." Failure to do so ..... violates the Ontario Human Rights Code.
- \* The arbitrator felt that although the employer had given Robbie a written warning regarding the racial slurs incident, the employer never involved Elston in an investigation or dispute resolution strategy. 3 months went by between the initial incident and filing of the grievance and the racial harassment continued to accelerate.

## Employer's 'delayed' Response to Racial Harassment Complaint Violates Human Rights Code ..... Continued

- \* Given Elston's request that the employer take urgent action to remedy the racial discrimination, the employer ought to have advised Elston as to how they were working to remedy the situation. *The employer made the effort ..... but was too slow in realizing that these efforts were not eliminating the racial harassment faced by its employees.*
- \* The arbitrator determined this was not an appropriate case in which to award compensation since Elston suffered no loss of salary or any other serious consequences. However, it was evident Elston was humiliated.
- \* *The arbitrator instructed the employer's Board of Directors to provide a written apology to Elston for failing to act promptly and effectively to eliminate the racial harassment. After trying a number of strategies short of suspension or termination of service to remedy Robbie's behaviour, the Board of Directors made the decision to terminate Robbie's service contract. Robbie continues to live at the same residence but is no longer provided with personal care or housekeeping services.*
- \* The Ontario Human Rights Commission exercised its discretion not to deal with the human rights complaint as they felt arbitration was a more appropriate forum.

**\*\* The employer violated the Human Rights Code and the Collective Agreement when it failed to take 'prompt and effective' \*\* steps to eliminate racial harassment and workplace discrimination. As the arbitrator stated, the employer should have responded immediately to Elston's racial harassment and discrimination complaint with a thorough investigation and corrective action. Employees have the right to 'a workplace completely free of racial harassment and discrimination' - period! ..... The employer just 'making an effort' to eliminate racial harassment is not good enough !!**



### Announcing Staff Changes

*We're sorry to say goodbye to Janet Burkett who will no longer be coordinating our workshops .... as she's done with unfailing efficiency and good cheer for the last 5 years! Janet has chosen to retire - good news for her - and we wish her well. She may return on special projects from time to time with us.*

*Trish Bradley is no longer our Administrative Support person as of January 1, 2001. She has decided to invest her time and energies with Hill Advisory Services as an Investigator and has been working on an Investigation Team for the past year. She is also looking forward to participating in our training sessions in the near future.*

*Sheri Swain has joined us effective January 1, 2001. She will be responsible for coordinating our Administrative Support services and our workshops ..... so she will be your first contact when you call our office. Sheri comes to us with an extensive background in research, administrative and client services. Welcome Sheri!*

### Upcoming Public Workshops

#### "Harassment Investigation" Level I & Level II

- Level I April 23, 24, 25
- Level II April 26, 27, 28

(Level II pending registrants)

**Best Western Hospitality Inn**  
135 Southland Drive, S.E  
Atrium Building  
Calgary Alberta

*Seating is limited!  
Register early and save .....*



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

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*It was a pleasure visiting Bow Valley College in Calgary and consulting with the working group regarding policy development. Thank you to Lily Chow for organizing the January 8th meeting.*

*Thanks also go out to Gary Hauk at Saskatchewan Housing Corporation in Saskatoon. We appreciate you arranging a meeting with a Housing Authority to look at an environmental assessment on January 9th.*

*As the City of Saskatoon's official trainers for harassment, we always enjoy our regular annual/semi-annual visits. Special thanks to Lois Baerg for coordinating 3 Harassment Awareness and Prevention training sessions for employees in February.*

*We also wish to extend our appreciation to Doug Schweitzer at Swift Current Housing Authority. You did a great job of organizing the Harassment Awareness and Prevention training session for all SCHA employees.*

**Don't forget to send us your e-mail address to ensure quick delivery of our "Electronic" newsletter. Contact Donna (the Editor) at:**  
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