

# HILL ADVISORY NEWS

*“Working with the human side of business”*



## Office Affair Ends in ‘Broken Heart’ ..... and Sexual Harassment !!



*An arbitrator recently had difficulty in determining the appropriate penalty for an employee in a sexual harassment case. The employee claimed his actions were a result of feeling hurt and ‘out of control’ because an ‘office romance’ was ending. The employer claimed they had a responsibility to employees to provide a workplace with ‘zero tolerance’ for harassment. The arbitrator referred to the following as a ‘close’ case .....*

- \* Franklin was employed with a provincial Social Services department for 25 years as a supervisor. His performance appraisals had always been satisfactory and he had no disciplinary record. Several years ago Franklin met Sally, an administrative secretary, who worked in the same regional office. They became involved in a lengthy extramarital consensual relationship which they kept hidden from their co-workers for many years. Sally was later assigned to work under Franklin’s supervision and she began to make efforts to end the relationship.
- \* Franklin, however, continued to pursue the relationship in the workplace by calling Sally pet names like ‘honey’ and ‘dear’ and attempting to touch her on numerous occasions. Sally began to act ‘cool’ toward Franklin but her efforts to end the relationship were resisted. On more than one occasion Sally told Franklin to stop ‘harassing’ her. Franklin later confronted Sally and told her that her attitude toward him must improve or he would approach the regional manager, who was a friend of his, and ask that they be separated due to their personal relationship. He had hoped this would upset Sally as he knew she wanted to keep their ‘affair’ private. However, Sally decided to approach the regional manager herself and told him she had been attempting to end her personal relationship with Franklin - but he would not accept the fact it was over and had been ‘harassing’ her.
- \* The regional manager immediately removed Sally from Franklin’s supervision and told Franklin not to have any further contact with her. Later that day Franklin approached Sally and said “You really are a bitch, aren’t you?” Sally reported this to the regional manager. A few days later Franklin received a memo from him stating “Given the unique nature of the situation, I have chosen not to investigate the validity of the sexual harassment allegation.” The memo went on to say “I would ask that, at work, you not initiate any discussion with Sally regarding your personal relationship that in any way might be construed as harassment.”
- \* The following month Franklin left an 8-page hand-written letter on Sally’s desk accusing her of having an affair with another office employee. Franklin made reference to the possibility of him ‘losing it’ and ‘doing something desperate.’ He indicated he still loved Sally and hoped for a reconciliation.
- \* Franklin then began discussing his relationship with Sally with other employees. A few weeks later Sally received a ‘romantic’ birthday card from Franklin at her home. At this point Sally became concerned for her safety. She had also become both physically and emotionally exhausted. She sought advice from a co-worker who advised her to again report the incidents to the regional manager, which she did.
- \* A few weeks later Sally’s husband and the wife of the employee who Franklin had accused Sally of having an affair with, received a computerized letter advising them of the alleged affair. It suggested they ‘Monitor their spouse’s schedules, telephone calls and credit cards carefully.’ At this point Sally contacted the Human Resources Department regarding Franklin’s behaviour and an investigation began.
- \* During the investigation Franklin admitted writing the 8-page letter to Sally. He claimed it had been important for him to write the letter ‘for closure.’ Franklin denied he had ‘sexually harassed’ Sally ..... since he felt sexual harassment involved threats and coercion. He confirmed that Sally had been trying to end the relationship and that he had been resisting her efforts. He also admitted sending the birthday card to her home because it was ‘too personal’ for the office. He felt the situation between himself and Sally could have been resolved if she would have admitted she was having another ‘affair.’ Franklin however denied writing the computer letter to Sally’s husband and the wife of the co-worker with whom he accused Sally of having an affair. He suggested that some other employee must have used his computer and written the letter.
- \* The investigation concluded that Franklin be dismissed based on his “unwillingness to recognize the wrongfulness of his conduct and his ongoing deceit.” The day following his dismissal Franklin filed a grievance. Several weeks later a member of the union submitted a letter to the employer stating “Franklin has advised the union that he in fact did author and send the computer letter and has asked that the union advise the employer.”

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- \* At the hearing the union agreed there was cause for discipline and the allegations of 'sexual harassment' did take place. *However, they argued that termination was too harsh a penalty given Franklin's discipline free long service. The union requested he be re-instated to 'a comparable position.'* They stated they were not seeking lost pay or benefits and would accept a lengthy period of suspension. During the arbitration hearing, Franklin apologized for his conduct towards Sally, her family, his co-workers and the employer. He admitted his actions had been designed to 'hurt Sally' and had been 'stupid.' He indicated Sally had 'broken his heart' and he was 'out of control.' He claimed if he were re-instated there would be no recurrence of any such behaviour.
- \* The employer explained they had considered whether something less than dismissal was appropriate. *However, they indicated that given Franklin's supervisory responsibilities; the fact that he had significant authority over a number of other employees; the fact that he had been repeatedly deceitful; and the critical need for maintenance of boundaries in the areas of social services ..... all favoured his dismissal. The employer felt they had the responsibility 'to provide a safe working environment for all employees' and had there been any mitigating factors, they would have seriously considered other discipline alternatives. However, the employer did admit the regional manager should have consulted with Human Resources and that he made a poor judgment call in the manner in which he addressed Franklin's behaviour.*
- \* The arbitrator stated *"I am left with the over-all impression that this is a very close case."* He felt Franklin's misconduct was serious, in addition to his deceit and untruthfulness. *He indicated the initial refusal to accept responsibility for the computer letter was particularly troubling and his attempt to implicate other employees was reprehensible and cowardly. The arbitrator stated that management's 'under response' when Sally spoke to the regional manager must also be considered. He indicated it was clear that given the manager's friendship with Franklin, he should have referred the complaint to someone else within management ..... and by not doing so .... gave the wrong message to Franklin.*
- \* The arbitrator further determined *"The harassment of Sally, although totally unjustified, had to be put into the context of the breakup of their relationship and the anger and frustration that Franklin experienced."* While he felt this did not minimize Franklin's misconduct, and did call for discipline, he did not agree that dismissal was the appropriate penalty. He also felt that Franklin's satisfactory work history, length of employment and lack of disciplinary record were mitigating factors and must be taken into consideration.
- \* The arbitrator further noted *"The principle of deterrence is important .... but I am of the view that the need for deterrence in these circumstances can be met without the permanent loss of the grievor's job."* He therefore substituted the termination with a suspension that would continue until a new or vacant position became available, with no pay or benefits until that time. He also ordered that Franklin not be reinstated to the same office where Sally was employed.

**\*\* As this case points out - many issues needed to be examined before a final decision was made regarding the appropriate penalty for 'sexual harassment'.....Was the employer justified in recommending Franklin's dismissal - even though they admitted the regional manager made a poor judgment call after Sally had complained about his inappropriate behaviour? Can Franklin's wrongful conduct and on-going deceitful actions - including his deliberate lying about the computer letter - be overlooked? The arbitrator determined the employer/employee relationship had not been 'irreparably damaged?' He also considered Franklin's 'state of mind' at the time of the 'harassment' to be a critical factor in his decision. Do you agree? Can you understand why the arbitrator had difficulty determining the appropriate penalty in what he referred to as a 'close' case? ..... Did the arbitrator make the right decision? \*\***

## WHAT'S NEW

We are pleased to announce that Bob Pruden has recently joined Hill Advisory Services as an Associate. Bob's unique background and education includes over 25 years experience in the Human Resources field in both the private and public sectors ..... specializing in Labour Relations. Welcome Bob!

We will now be offering Labour Relations services geared "to develop more positive working relationships" between the primary parties.

**\*\* See Attachment \*\***

## Upcoming Public Workshops

**"Harassment Investigation"**  
Level I & Level II

Level I Nov. 12, 13, 14  
Level II Nov. 15, 16, 17

Lord Beaverbrook Hotel  
659 Queen Street  
Fredericton New Brunswick

**EARLY  
BIRD  
SPECIALS**

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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