

HILL ADVISORY NEWS

“Working with the human side of business”



Does Human Rights Tribunal have Jurisdiction to order a Letter of Apology from ‘Harasser’ ??



- * Charlene worked in the service performance evaluation section of a federal government department for 20 years. She was also the vice president of her local union. Atal had been with the department for 10 years and worked in the accounting area. Atal and Charlene first met at a union membership meeting. Several days later, Atal arrived at Charlene’s office and inquired as to how he could become more involved with the union. Since Charlene did not know Atal very well, she suggested he speak with the union president. However, Atal continued to come to Charlene’s office with questions regarding the union on a regular basis. Charlene felt uncomfortable with these visits but said nothing.
- * A few weeks later, a general union membership meeting was held to elect local officers. Charlene was elected president. The executive members recommended Atal’s candidacy for treasurer to Charlene. Initially, she objected to Atal’s nomination, because of his office visits, but eventually agreed with the other executive members. As a result, Atal was elected treasurer.
- * Shortly thereafter, Atal began to contact Charlene repeatedly in person and by phone. Even though there was no reason for Atal to be in touch with Charlene, he would call and visit her 4 or 5 times a day. He began to discuss personal matters regarding his family life, his marriage and customs of his culture. Charlene felt these conversations were distracting her from her work and were also becoming very annoying. When she would ask him to leave, he would stand in the doorway and stare at her.
- * One day Atal called Charlene at her office during an ice storm and told her the roads were very slippery and that he would drive her home. Charlene initially said ‘No’ but finally agreed after Atal insisted. When they arrived at Charlene’s apartment, Atal asked if he could come in and have a drink. Charlene said ‘No’ and told him to ‘*behave himself*’ but he persisted and said “*It’s okay if we have sex*” and “*Won’t you even give me a kiss?*” Charlene said ‘No,’ got out of the car and slammed the door. The following day Charlene spoke with some of the other union executive members.
- * The executive members told her it was a ‘*personal*’ matter and not to involve the union. Charlene then realized she would have to deal with Atal on her own. Atal’s visits and calls continued and his remarks began to get more ‘*sexual.*’ On one occasion, he indicated that Charlene could make his ‘*fantasies come true*’ and told her to keep their ‘*relationship*’ a secret since ‘*it was a man’s world*’ and nobody would believe her.
- * One day Charlene stopped in at the union office to catch up on some work. When she arrived she found Atal sitting at the computer with an open bottle of beer. He appeared to be ‘*tipsy.*’ Charlene sat at her desk and Atal walked up behind her. He said he needed to get to the bulletin board behind her desk and asked her to move her chair. As she pulled her chair forward, Atal pushed her chair up against her desk, grabbed her forearms and began kissing her hair and neck. Charlene told him to ‘*get off*’ but he refused saying that he was in love with her and she ‘*had to have sex with him.*’ She told him that she was going to call the police at which point he let her go.
- * Atal then told Charlene he had sought the treasurer’s position just so he could pursue her. Charlene told him that his behaviour was inappropriate, in violation of the union harassment policy and that he could be disciplined. She thought about actually calling the police but decided against it as she felt it would be her word against his.
- * The next day Charlene wrote a letter to Atal and sent a copy to the other union executive members. In the letter Charlene stated that Atal’s sexual comments were ‘*unwarranted and unwelcome*’ and that she felt he was ‘*sexually harassing*’ her. The following day 2 of the union executive members met with Atal and told him not to have any further contact with Charlene other than for union related business. Atal denied having done anything wrong and agreed not to ‘*bother*’ Charlene any more. However, within a few days, Atal started to call and visit Charlene again. He continued to make ‘*sexual*’ comments and to ask her to have sex with him.

- * Atal's behaviour escalated to a point where Charlene felt she had no choice but to move from her current apartment. Atal had informed her that he and his family were planning on moving into a house near her apartment. He indicated he would be visiting her on weekends and evenings. Charlene became very upset and decided to move. She sent a second letter to Atal and a meeting was subsequently scheduled with Atal, Charlene and the other union executive members. At the meeting Atal continuously interjected with denials shouting to Charlene "That's not true and you're lying!" When he was asked about his repeated requests for sex, he conceded that "It's not 3 times I demanded sex from you, it was once and I was drunk."
- * The Human Rights Tribunal first dealt with the issue raised by Atal that the jurisdiction of the Human Rights Act did not cover this situation since Atal only met and dealt with Charlene as a result of their involvement with the union and not, strictly speaking, in the course of their employment. The Tribunal disagreed with Atal and determined that 'since many of the alleged acts of misconduct occurred at the parties' place of employment during regular working hours - and the work done on behalf of the union was inextricably linked to their employment - it was subject to the Act.'
- * The Tribunal determined that Charlene's testimony was much more believable than that of Atal. Her testimony was 'detailed comprehensive, forthright and believable' whereas Atal's constant denials and suggestions that all of the other witnesses had lied were 'simply not credible.' They further noted that sexual harassment was defined as 'unwelcome conduct of a sexual nature that adversely affected the work environment.' They indicated that Atal's requests were clearly 'sexual' consisting of nothing less than requests for 'sexual relations' with Charlene. These requests were obviously unwelcome and created a 'hostile' work environment. The Tribunal subsequently ruled that Atal had engaged in a 'persistent course of sexual harassment.'
- * Disappointed with the outcome of the meeting and feeling that her 'home territory had been invaded,' Charlene filed a human rights complaint of 'sexual harassment' with her employer. She also laid charges under the union's constitution and by-laws. An investigation followed. The employer concluded that Atal's 'obsessive behaviour' and 'unwelcome sexual requests' were unacceptable and could not be condoned by the employer. The employer subsequently ordered Atal to attend a human rights sensitization course, to provide a full and frank apology to Charlene and to cease having any contact with her. Atal was also suspended from work without pay for 2 weeks and a copy of the letter setting out these conclusions was placed on his personnel file. Any violation of these conditions would result in his termination of employment. 2 months later Charlene filed a complaint with the Canadian Human Rights Commission and a hearing followed
- * Atal was therefore ordered to pay Charlene \$12,000 for pain and suffering, \$15,000 for willfully and recklessly engaging in a discriminatory practice and \$6,700 for expenses related to her move to a new location. He was also ordered to attend a sexual harassment course at his own expense. However, the Tribunal declined to order Atal to provide Charlene with a letter of apology, stating they did not have authority under the Human Rights Act to make such an order.

** (This decision was based on a previous Federal Court's ruling in 'Stevenson v. Canadian Security Intelligence Service.') The Court quashed an order of the Canadian Human Rights Tribunal requiring the employer to apologize to a dismissed employee on the basis that such a requirement effectively forced the employer "to utter an opinion which is misleading and untrue." The presiding judge observed "I cannot see how an apology under compulsion, such as the one the Director of CSIS is ordered to make in this case, can possibly serve to advance the primary focus of the Canadian Human Rights Act, which is the eradication of discriminatory practices."



'Last Chance'
to Register for Upcoming
Public Workshops



'Myths'

About Sexual Harassment

According to the B.C. Federation of Labour

'Harassment Investigation' Level 1 & Level 2

Level 1 April 4, 5, 6
Level 2 April 7, 8, 9
** Calgary AB **



Level 1 April 18, 19, 20
Level 2 April 21, 22, 23
** Halifax NS **

- * 'Sexual harassment is not very common'

Recent surveys have indicated that 80 - 90% of women in the labour force have experienced sexual harassment at some time in their working lives. In Canada, that represents 3.6 million women.

- * 'Sexual harassment doesn't hurt anyone'

Besides the threats to economic security, sexual harassment can severely affect the victim's health. Victims suffer tension, anxiety, anger, fear and frustration.

Limited seating still available
Register early and save \$\$\$

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