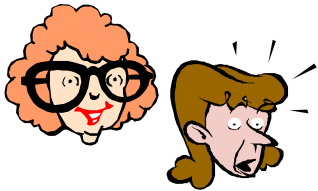


# HILL ADVISORY NEWS

*“Working with the human side of business”*



## Vice Principal ends Successful Career with Demotion and Suspension .... due to ‘Misconduct’ and ‘Racial Discrimination’



*“Your behaviour is inappropriate!”*

*“I didn’t mean any harm.”*

- \* Jerry was a teacher for 31 years and taught at the same school throughout his entire career. He held the position of vice principal for the past 28 years. He had grown up in the area and had gone to school with many of the other teachers. Because they all knew each other so well, they would often tease one another and make sexual innuendos to each other.
- \* One day Jerry went to the staff room and found Cindy, a co-worker, stacking books on a table in an attempt to tidy up. Cindy and Jerry had worked closely together for 30 years and were well aware of each other’s moods. Jerry objected to what she was doing. Cindy subsequently asked him *“What am I supposed to do with them?”* Jerry replied *“You can shove them up your f - - - ing a - - - for all I care.”* Another teacher who was also in the staff room at the time complained to the School Board about Jerry’s remarks. As a result, Jerry received a warning letter which was placed on his personnel file.
- \* Sharon who was of African descent had been teaching at the school for the past 10 years. A month after Jerry had received his warning letter he began making inappropriate comments to Sharon. She had approached Jerry for some brown construction paper. Jerry asked her if she wanted *‘light brown, dark brown, or black like you.’* Sharon replied that she could see only one shade of brown paper and she would take that. Sharon believed this comment to be of a discriminatory nature regarding her *‘heritage’* status ..... but did not report it to anyone since there were no witnesses and it would be her word against his.
- \* A month later while Sharon was in the gym Jerry approached her and asked her what she thought about the new paint job on the far wall. Sharon said that she liked it and Jerry replied *“I figured you’d say that because it’s black like you.”* Sharon became very upset and felt degraded. She could not understand why he would make such a derogatory comment. A few weeks later Sharon was sitting in the staff room with a few other teachers when Jerry entered holding a vial of dark liquid. Jerry said *“Hey Sharon ..... this is blacker than you.”* Sharon replied *“What was that you just said?”* Jerry did not respond. The staff room went silent and Sharon felt angry and humiliated.
- \* A few weeks later Jerry walked by Sharon’s classroom whistling a song titled *“Brown Girl in the Ring.”* Jerry proceeded to go down the hall, then turned around, and walked back to Sharon’s door. He began to snicker and glared at her. He then made some rude gestures with his arms and legs which appeared to mimic an ape or monkey. Sharon believed Jerry was making fun of her *‘racial’* status and was trying to get her to confront him. Another teacher was standing in the hallway and witnessed the entire incident.
- \* Sharon finally spoke to her husband about Jerry’s inappropriate behaviour and he contacted their lawyer. Sharon then spoke to the School Board and met with the director of human resources as well as a union representative. Sharon informed them about Jerry’s humiliating actions and comments and requested a transfer to another school. The human resources department decided to conduct an investigation and interviewed several teachers.
- \* During one of the interviews it was discovered that another female teacher, Brenda, had experienced 2 disturbing incidents over the past several months which were initiated by Jerry. He had paged her to come to his office and when Brenda arrived she simply asked *“Did you want me?”* Jerry replied *“Oh yes ..... badly.”* Brenda felt this comment was *‘very personal and sexual in nature’* and most inappropriate. On another occasion when Jerry learned Brenda’s husband had been out of town for several days and was returning home that evening, he stated *“I guess the lights will be off early at your house tonight.”* Brenda became very uncomfortable, blushed and took this comment to be a *‘sexual’* remark. She did not discuss these incidents with anyone as this was her first year teaching at the school and she did not want to *‘rock the boat.’*
- \* The investigation team met with Jerry and a union representative outlining the allegations. Jerry was given the opportunity to respond but he declined to comment and did not deny the allegations. The School Board superintendent sent Jerry a letter advising him that based on the internal harassment investigation, he would be suspended without pay for 10 days, be removed from his position as vice principal, transferred to another school and required to undergo sensitivity training.

Continued ..... (2)

- \* This recommendation was subsequently sent to the School Board who had the right to confirm, vary or revoke the discipline. 2 weeks later the School Board met to review the decision. Jerry was given the opportunity to attend the meeting but did not do so because he felt the disciplinary action against him had already been agreed upon between human resources and the union. The union faxed a letter from Jerry stating he did not recall making the comments regarding the 'construction paper' or the 'gym wall.' In the letter, Jerry admitted to making the remark about the liquid in the 'vial' ..... and while he did not recall whistling the tune in front of Sharon, he did admit to knowing the tune and whistling it frequently.
- \* The Board was concerned that the letter from Jerry was unsigned and felt he had taken 'absolutely no responsibility' for any of the allegations. They also had a great concern about this letter 'coming in at the last minute'..... which indicated to them that Jerry had not taken these matters seriously. The Board felt that given Jerry's previous warnings, the 10-day suspension was a 'slap on the wrist.' It was subsequently decided unanimously that Jerry would be suspended without pay for 58 days until the end of the school year. The other aspects of the discipline had already been implemented. The union argued the 58-day suspension was too severe and appealed the decision to the Board of Appeal.
- \* During the arbitration hearing Jerry denied that a 'sexual' connotation was intended towards Brenda when he made the remark 'Oh yes ... badly.' He indicated that in fact he had been very annoyed because he had a hard time reaching her as she had not been in her classroom as scheduled. Jerry admitted making the 'lights off' comment to Brenda but testified he just said it to tease her. However, he acknowledged that this comment was 'inappropriate' and had previously apologized for any 'discomfort' Brenda may have experienced. The arbitrator reviewed the definition of 'sexual harassment' in the Nova Scotia Human Rights Act and determined these statements uttered by Jerry 'did not constitute vexatious sexual conduct but did amount to misconduct warranting discipline.'
- \* The arbitrator accepted the fact that there was a group of teachers, including Jerry, who had gone to school together and/or taught classes together for a very long time.
- \* Their familiarity with each other led them to joke and tease each other as long time acquaintances or friends might do. The arbitrator noted this would have created a very isolating environment for Sharon and the incidents between her and Jerry must be looked at in that context. She reviewed the incidents related to the 'construction paper' and the 'gym wall.' Jerry had indicated in his letter to the Board that he had no recollection of making the comments and that whatever he had said could have been misinterpreted.
- \* The arbitrator next reviewed the incident regarding the 'vial.' She stated "There was no justification for drawing attention to the colour of Sharon's skin. It was thoughtless, inconsiderate and extremely insensitive. It could reasonably be interpreted as a derogatory comment since Sharon was the only black teacher in the school." The arbitrator felt it was significant that Jerry admitted to making this comment while indicating that he would not have made the 2 earlier comments because they could have been misinterpreted. The fear of misinterpretation did not seem to matter to Jerry in this case.
- \* With regards to the whistling of the "Brown Girl in the Ring" incident, the arbitrator accepted the fact that Jerry whistled the tune on occasion. However, she stated that no one had suggested that the tune was in any way 'racist' and that pausing at Sharon's door did not necessarily suggest that Jerry was trying to confront Sharon.
- \* Finally the arbitrator stated it was clear in the law of discrimination that 'A perpetrator need not have a discriminatory intent, if the result of the action or conduct was itself discriminatory .....and so here where a teacher engages in conduct that is inappropriate, insensitive and unwelcome, drawing attention to another's race ..... such conduct cannot be excused on the basis that no harm was intended.' She continued by saying that she could not understand why a teacher with a very long and otherwise unblemished work record ..... would engage in such acts of misconduct, almost at the end of his teaching career.
- \* The arbitrator allowed Jerry's appeal in part and determined the 58-day suspension imposed by the School Board was excessive. She concluded that the discipline originally recommended by staff and imposed by the superintendent was more appropriate in this case.

**\*\* The arbitrator felt very strongly that the 10-day suspension was no 'slap on the wrist' for Jerry as previously indicated by the School Board. She stated 10 days suspension without pay and removal from the administrative position which he had held for 28 years ..... not only has immediate financial consequences but pension implications over the long term. Transfer from the school at which Jerry had taught all his professional life to spend what remained of his career as a 'regular' teacher in a new school ..... is a serious demotion. Removal of the vice principal position recognizes that his conduct was totally 'unacceptable.' These consequences, along with the sensitivity training which he completed, constitute an appropriate response to these complaints. \*\***

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September 11 - 16th, 2006  
\*\* Edmonton AB \*\*

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**Level 1 & Level 2**

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For more information contact Sheri:  
Phone/fax: (204) 831 - 7661  
E-mail: sswain@hilladvisory.com  
Website: www.hilladvisory.com

\*\* See Attachment \*\*