

# HILL ADVISORY NEWS

*“Working with the human side of business”*

**'E-LEARNING'**



## An Innovative 'Harassment Awareness and Prevention' Training Program

**'E-LEARNING'**



Hill Advisory Services have taken their 4-hour comprehensive training program and condensed it to a new electronic format. Some highlights include: eight 15 minute modules; five case studies and a quiz related to viewer knowledge in our NEW 'E-Learning' training program.

This is a dynamic, interactive training program that can be viewed in a variety of ways such as:

- \* by individual participants working through modules as they have time
- \* by teams reviewing a module for discussion purposes
- \* for employee orientation
- \* by an employee and supervisor to refresh the employee's understanding on a particular aspect of harassment

Our training program can be modified to suit your individualized workplace, Harassment Policy and pertinent legislation.

- \* The five case studies are live action rather than in script, featuring professional actors portraying realistic harassment scenarios.
- \* The contents are completely Canadian-based.
- \* The costs pertaining to this type of training versus the classroom training model are significantly reduced - yet the content is of our usual high-standard.

*We hope you can join us on April 26th, in Halifax, for a 'Wine and Cheese'..... and view a sample of this product. Please see the attached invitation for more details. (RSVP is required.)*



**\*\* Watch for future locations to preview \*\***  
this product, or contact our office at  
(204) 831 - 7661 for more information.



*“ You're fired!”*

## Union Official Claims 'Wrongful Dismissal' for Sexual Harassment ..... Since he Received no Prior Warning



\* Arthur was a 61 year old divorcee who worked for 25 years as an international representative for a large Canadian union. Myrna, a co-worker, was 35 years old and had indicated to Arthur that she was also interested in becoming an international union representative. Arthur decided to take her 'under his wing' and gave her advice on how to proceed with her application. Myrna was eventually successful in obtaining the position.

\* Over the next 3 years Arthur assisted Myrna in her new position and served as her mentor. He also expressed a romantic interest in Myrna and showered her with cards, flowers and presents. Myrna did not feel the same way as Arthur and subsequently gave him a letter informing him that his behaviour was causing her a great deal of discomfort. She eventually told him that he was 'too old' and there was no chance of a personal relationship between them.

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- \* Myrna indicated to Arthur that she felt his actions amounted to sexual harassment and asked a male friend of hers to speak to him about his inappropriate behaviour. Arthur's supervisor also admonished him for sending cards and e-mails to Myrna and told him that it must stop. Arthur replied that he had stopped this behaviour after Myrna had spoken to him about their relationship.
- \* Over the following 3 years Arthur and Myrna continued to work together. However, Arthur was not as supportive of Myrna as he had been in the past and sometimes would not provide her with the materials and information she required to do her job properly. Arthur also made disparaging remarks about her to other union employees. Myrna felt his actions were probably due to her refusal to have a relationship with him. Myrna tried to change her work habits to avoid seeing Arthur but did not want to report him to her supervisor for fear that it might make the situation worse.
- \* One day at a union meeting Arthur accused another participant of flirting with Myrna and did so in her presence. Later that year Arthur made derogatory remarks to a union organizer about Myrna's personal sex life. Myrna finally complained to a union official about Arthur's 'inappropriate' behaviour.
- \* The union conducted an investigation into Myrna's complaint. Arthur consistently denied Myrna's accusations but was confronted with clear evidence to the contrary. He continually denied that he had ever had a romantic interest in Myrna despite the volume of cards he had sent expressing that very sentiment. Following the investigation Arthur was asked to retire but refused. A short time later Arthur was fired on grounds of 'sexual harassment.' Arthur then sued for 'wrongful dismissal.'
- \* At trial in the B.C. Supreme Court, the judge ruled that while Arthur's behaviour did constitute 'sexual harassment,' the seriousness of it fell 'in the middle of the spectrum.' She acknowledged that some forms of 'sexual harassment' can be so serious as to warrant dismissal without a warning. However, the judge stated that in this case, given that Arthur was a 'long-term and loyal employee with an otherwise clean disciplinary work record' ..... he was entitled to 'a clear warning that if his harassment continued, it would lead to his dismissal.'
- \* Since the union had given Arthur no such warning, and since the judge felt that his conduct did not amount to a complete breakdown in the employment relationship ..... she ruled that Arthur had been 'unjustly dismissed.' She stated "Had the plaintiff been warned about his harassment, he could have reflected on it and changed it, if he wished to continue his employment. On the other hand, if he persisted in harassing her after a warning, the union would clearly have been justified in dismissing him." The trial judge subsequently awarded Arthur damages of 24 months salary. The union appealed her decision.
- \* A three-member panel of the B.C. Court of Appeal heard the case. The majority decision dismissed the appeal, ruling that the trial judge had made no errors in determining that Arthur could not be dismissed without an explicit prior warning. The Court stated "The trial judge made no error in appreciation of the evidence or in law, in reaching her conclusion that this was not a case where summary dismissal was justified without a proper prior warning followed by a repetition of the impugned conduct."
- \* The Court noted "What constitutes a warning may vary with the circumstances. But it is more than an admonishment. It should indicate the nature of the impugned conduct and its wrongfulness and it should include a statement that disciplinary consequences may be expected to follow if the impugned conduct continues."
- \* The Appeal Court also rejected the union's argument that the trial judge had failed to adequately consider the context in which Arthur's 'harassing conduct' occurred. The union's position was that the union must expect the highest standards in its own working environment if it is to expect the same standards for its members in their working environment. The Court stated "The full context, with all of its ramifications, must have been at the forefront of the trial judge's mind." The fact that she did not dwell on it did not mean that she did not take it into account. The Court therefore dismissed the union's appeal.
- \* One member of the three-member B.C. Court of Appeal dissented with the decision. She felt that Arthur would not have changed his behaviour even if he had been given a warning regarding his conduct. She concluded by saying "It is difficult to conceive of the need to tell a senior trade union representative that he may not retaliate for his spurned advances."

\*\* *The B.C. Court of Appeal, like the trial judge, thought it was not always necessary for a prior warning to be issued before an employee could be dismissed for 'sexual harassment.' In cases where the harassment is so serious that it is destructive of relationships and the work environment, immediate dismissal without warning would be warranted. However, it is far from clear as to where the dividing line is. Determining the severity of 'sexual harassment' remains subjective ..... and the decision as to whether dismissal without warning is justified may well vary from judge to judge.* \*\*

September 18 - 23rd, 2006  
\*\* Edmonton AB \*\*



'Harassment Investigation'  
Level 1 & Level 2

November 20 - 25th, 2006  
\*\* Winnipeg MB \*\*

Website: [www.hilladvisory.com](http://www.hilladvisory.com)