

HILL ADVISORY NEWS

“Working with the human side of business”



‘Delayed and Inadequate’ Investigation of Sexual Harassment Complaint costs Canadian Armed Forces \$5,000



- * Georgina joined the Canadian Armed Forces (CAF) in 1981. In 1987 Georgina and her husband, who was also in the CAF, were posted to the West coast where she was promoted to the rank of Corporal. Unfortunately, things did not go well for Georgina over the next few years. Her husband was often away for months on end on sea duty. Georgina also had to look after her mother who was very ill and required considerable care. This put her under a great deal of emotional and psychological stress.
- * As a result Georgina began drinking to excess and was subsequently put on probation for making *‘derogatory’* comments against her superiors. She was provided counselling and was told that any future misuse of alcohol would result in her immediate release. However over the next few years Georgina’s job performance improved. Her performance evaluation scored her an *‘8 out of 10’* and described her as *‘highly reliable, always willing to assist her peers’* and *‘set a fine example for all.’* As a result she was promoted to Master Corporal.
- * In 1993 Georgina was transferred to Toronto. She reported to a female Sergeant who also supervised 5 civilian employees. One day while Georgina was unloading some material from a truck she heard Mark, one of the civilian employees, call her to come over to him. Mark was standing talking to one of the drivers and when Georgina approached them Mark said *“We both think you’d be great in a porno flick.”* She was shocked but said nothing. She immediately reported the incident to her Warrant Officer (WO). Georgina’s WO told her to go back and tell Mark that his comment was *‘inappropriate’* and to stop making these type of remarks. Although she would have preferred that her WO speak to Mark, she reluctantly returned to the loading dock and did as her WO had suggested.
- * Several months later Mark turned to Georgina and said *“Georgina, I can’t see your butt anymore. Either gain back some weight or get tighter pants.”* Once again Georgina went to see her WO. She told him what Mark had said and told him that these comments were not going to stop until he spoke with him. Her WO responded that he would discuss the problem with his own supervisor before following up with Mark and get back to Georgina.
- * The following month Mark approached Georgina in the lunch room, sat down at her table and said *“If you’re lying on top of your husband in bed and smoking a cigarette, I guess it gets pretty hot.”* Again Georgina went immediately to her WO and reported the incident and insisted that he do something about it. He again told her he would take care of it but she never heard back from him.
- * Problems continued as Georgina subsequently transferred to a different area on the base and now reported to a male Sergeant. Her WO told her she would be trained by Steve, a male Corporal, but stated *“There is no rank here, you are equal in rank.”* Georgina was very upset over his comment and felt that as a Master Corporal she was not being respected. A few days later Georgina asked her Sergeant if she could take Friday afternoon off. He agreed but on her return to work on Monday Steve said to her *“Who the f - - k do you think you are phoning the Sergeant and telling him that we are not busy over here and getting the afternoon off?”* Georgina told Steve he should not be speaking to her like that and that she was a Master Corporal. His response was *“Don’t give me that f - - king Master Corporal bulls - - t!”*
- * Georgina immediately spoke to her WO about Steve’s remarks. Her WO interviewed Steve who admitted he had spoken disrespectfully to Georgina but denied swearing or using *‘foul’* language. Georgina’s WO stated that even though Steve probably had made those *‘inappropriate’* remarks, he would take Steve’s word over hers because he had known him longer. Georgina heard nothing further.
- * A few months later Georgina was written up for technical breaches of the CAF’s reporting-in procedures after she was 35 minutes late due to a babysitting emergency. She was told by her WO that she would be *‘charged’* if she was even one minute late for duty in the future.
- * Georgina filed a *‘personal harassment’* grievance against her WO and in it she also complained about Mark’s *‘inappropriate’* comments. An investigation followed and Georgina’s WO was found to have *‘harassed her personally’*..... by requiring Georgina to follow specific reporting-in procedures not applicable to other personnel.

- * This was noted on Georgina's WO's personnel file and he was subsequently sent for 'personal harassment awareness' and 'sensitivity' training. When Mark was questioned during the investigation, he stated he was remorseful and upset about the matter. Since he had no previous record of 'harassment' or any other misconduct, a recorded warning was placed on his personnel file.
- * In the meantime, Georgina began to slip back into her old ways. She continued to have problems with her subordinates and her superiors. One day she hid a tape recorder in her bra and began to record conversations with personnel in the depot. She said she wanted evidence about how staff were speaking 'inappropriately' to her. A meeting was held and after Georgina was formally ordered to stop taping conversations with co-workers, she lost her temper, began shouting and was told to keep quiet. Georgina continued this disruptive behaviour and was subsequently charged and convicted of 'disobeying a lawful command of a superior officer by continuing to interrupt a verbal briefing when ordered to do so.'
- * Things came to a head when a formal depot mess dinner was held. Georgina got drunk and unleashed a 'verbal tirade' at her WO. She then lifted her skirt above her waist and pointed at her 'privates' and threatened to 'punch him in the head.' She was subsequently found to be 'unsuitable for further service' and was released from the CAF. Georgina filed a complaint with the Canadian Human Rights Commission against the CAF alleging 'gender discrimination and sexual harassment.' A hearing followed
- * The Canadian Human Rights Tribunal stated "It is discriminatory to differentiate adversely between employees due to gender." They stated Georgina must demonstrate, on the balance of probabilities, that 'she received different treatment in which gender played a role.' Georgina claimed that the actions of her WO as well as all of the other people involved in her case were part of a plan to get her out of the military because 'she was a woman.'
- * However, the Tribunal felt Georgina's case regarding 'gender discrimination' amounted to little more than a 'conspiracy theory.' They stated that while Georgina's WO may have been guilty of 'poor management and judgment' none of her allegations of 'discrimination due to gender' had been substantiated. The Tribunal stated that the CAF's response to Georgina's conduct at the mess dinner was 'non discriminatory.' They subsequently concluded "Gender played no role in the decision to recommend Georgina's release."
- * In regards to Georgina's charge of 'sexual harassment' the Tribunal stated that in determining whether conduct is 'unwelcome' there are certain factors to be considered. What was the complainant's reaction at the time of the incident, and had the complainant expressly or by his/her actions, made it known that the conduct was 'unwelcome?' They also indicated that for behaviour to amount to 'harassment' some element of persistence is usually required. Although in some cases, a single, serious incident may be sufficient.
- * The Tribunal therefore determined that Mark's comments did constitute 'sexual harassment' and were 'very upsetting' to Georgina. They found that Mark's conduct did create an 'adverse or hostile work environment.' They continued by saying that "Even though the CAF did finally act on the incidents it did not save them from liability."
- * The Canadian Human Rights Tribunal referred to the CAF's personal 'harassment policy.' It stated that any claim of 'sexual harassment' should be investigated 'promptly and thoroughly' and that the handling of this matter did not result in 'preventing the act or mitigating or avoiding its effect' since Mark continued to make 'sexual' comments after Georgina first complained. They subsequently concluded that Georgina's complaint of 'sexual harassment' had been substantiated and awarded her \$5,000 in damages for injury to her dignity and self respect.

** As this decision illustrates, an employee's 'sexual harassment' complaint immediately triggers a duty on the employer's part to conduct a prompt, thorough and fair investigation and the consequences of failing to do so can be expensive. It is evident that following Georgina's numerous complaints to her WO regarding 'inappropriate' comments made by Mark (and later Steve) her WO failed to take proper action. It wasn't until Georgina filed a 'personal harassment' grievance against her WO and Mark that an internal investigation was conducted. Following the investigation, it is also evident the employer still failed to fully recognize the extent of the 'seriousness' of Mark's misconduct and its understandable effects upon Georgina. **

★ Thanks ★

Special thanks go out to all our participants who helped to make our public Harassment Investigation workshops (Level 1 & 2) held last April in Halifax such a success. We had a great time and met some nice folks!



**Upcoming Public Workshops
to be Held in Saskatoon SK**

'Harassment Investigation'
Level 1 & Level 2



September 10 - 15th, 2007
Limited seating still available
Register early and save \$\$\$



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