

EMPLOYERS' ALERT

Employer Allows Manager to Harass Employee: Pays \$1,000,000 Damages as a Result

Yet another case shows that employers must take responsibility for the environments in which their employees work. They must also ensure that managers treat their employees appropriately and with respect. In this case, the RCMP failed to do so, and as a result, had to pay nearly \$1,000,000 in damages to one of its employees.

WHAT'S NEW AT RUBIN THOMLINSON LLP

- We are pleased to welcome Elyse Mallins to our firm. Elyse, who was called in 2003, will be continuing her practice in employment and human rights law. Elyse will be speaking at the annual Credit Union Learning Symposium on May 3rd, 2006.
- Our two-day "Respect at Work" seminar, held on April 26th and 27th, was once again well received and sold out. Look for our upcoming RT employer breakfast seminar on June 28th, and our innovative "Managing the Disabled Employee" workshop on July 19th – e-vites will be going out shortly.
- Stay tuned for "The Guide to Workplace Investigations", by Janice Rubin and Christine M. Thomlinson. Canada Law Book will be publishing the book shortly.

We work with our clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca

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The Harassment

The facts of this case are compelling: Nancy Sulz was a young female officer who was treated in an insensitive and downright nasty fashion by Sgt. Smith for reasons which seemed to be related to her gender, her less aggressive personality and her taking of maternity leave. Smith swore at Sulz, threw paperwork at her, communicated to her in a highly sarcastic fashion, bad-mouthed her, and tried to isolate her in their office.

Employer fails to intervene

Sulz made attempts to have her employer intervene, but the RCMP's efforts were lacklustre at best, and her intolerable situation continued. In fact, Smith's behaviour escalated to a point where Sulz's health and mental well-being deteriorated so dramatically that that she could no longer work. She eventually received a medical discharge from the RCMP.

Employer negligent

In bringing her lawsuit forward, Sulz successfully argued that the RCMP was ultimately responsible for Smith's harassment because it did not correct the situation once it was brought to its attention. The trial judge accepted that the RCMP was legally responsible for Smith's behaviour, and that it was negligent in allowing it to continue. The sizable award compensated Sulz for her lost earnings on trial, future lost earnings, and included an amount of \$125,000 on account of general damages.

DID YOU KNOW?

- The Ontario Human Rights Commission ("OHRC")'s website has many useful resources for employers. Two note-worthy examples include:

Hiring? A Human Rights Guide:

<http://www.ohrc.on.ca/english/publications/hiring-guide.shtml>

and;

If you Receive a Human Rights Complaint: A Respondents Guide

<http://www.ohrc.on.ca/english/publications/respondents-guide.shtml>

- Find these articles, and more, at the OHRC's publications website:

<http://www.ohrc.on.ca/english/publications/index.shtml>

What Does this Mean for Employers?

- Employers must be highly responsive to complaints of harassment in the workplace. If the situation is not fixed, they may be exposed to damages.
- Courts are increasingly willing to compensate injured employees for non-Code harassment type behaviour such as bullying, swearing and demeaning communication. These damage awards are significantly higher than what employees have traditionally received from human rights tribunals.
- In light of this trend, it is essential that employers take proactive steps to prevent harassment in the workplace. In our view, this includes a "Respect at Work" policy that clearly sets out the standard of behaviour that is expected in the workplace, as well as a complaint and remediation process to enforce these standards. All employees, and their managers should be trained on this policy.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.