

EMPLOYERS' ALERT

July 2007

Bullying in the Workplace – Is Your Workplace Protected?

It was not so long ago that a bullied employee might have come to us for legal advice and we would have been forced to tell them that there was very little, if anything, we could do for them. The problem was that, unless the behaviour which the employee was experiencing was related to one of the grounds of discrimination prohibited under human rights legislation, the employee's options were limited.

Much has changed. Courts, and more recently governments, are taking action to address the problem of bullying in the workplace. In this shrinking labour market, existing employees are increasingly being asked to do more with less, causing more stress and tension in the workplace. All of this could easily see a rise in behaviour which, when legally considered, amounts to workplace bullying and personal harassment.

What Are the Courts Doing?

We have known for a number of years that bullying victims who do not have access to a provincial human rights commission can sue their employers, claiming constructive dismissal. These employees can be successful if they experience behaviour at work which, when looked at objectively, is offensive and/or humiliating or demeaning and makes their continued employment intolerable.

More recently, however, it is becoming clear that the monetary risk to an employer for allowing this type of behaviour to continue in the workplace has the potential to be far more significant than paying severance to a victim who decides to quit. Lawyers acting for victims are now considering characterizing their clients' damages in the same way they might if the plaintiff was the victim of some other form of serious accident or injury. In doing so, a wider range of damages are available to bullying victims, many of which far exceed claims traditionally made in the context of a wrongful dismissal lawsuit.

WHAT'S NEW AT RUBIN THOMLINSON LLP

CONGRATULATIONS, JANICE!



We are thrilled to announce that, for the second year running, Janice Rubin has been selected by her peers for inclusion in the Canadian edition of The Best Lawyers in Canada - a listing of the country's top lawyers that is considered to be the gold standard of reliability and integrity in lawyer ratings. Like its long-standing

sister publication, The Best Lawyers in America, lawyers listed in the Canadian edition are included solely on the votes of their peers.

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On July 6th, David Whitten was one of 40 experts who spoke at the Canadian Payroll Association's Annual Conference in St. John's, Newfoundland. His presentation was very well received, given the large turnout (85 registrants) and the high level of audience participation.

We work with employer 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.

Upcoming Events

Chris Thomlinson is chairing a teleseminar on September 18, 2007 for the Law Society of Upper Canada on the Role of Counsel in Workplace Investigations. Janice Rubin is one of the three Presenters on the panel.

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Don't forget to mark October 2, 2007, in your calendar as the date for the next RT Breakfast. Chris Thomlinson will be discussing the legal issues associated with employing an aging workforce – there are many, and we think you'll be surprised by some of them. Invitations will be sent via e-mail in September. These events sell-out very fast, so be sure to let us know if your e-mail changes before then. We look forward to seeing you.

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, and without seeking the advice of legal counsel. 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.

What are Governments Doing?

What is equally interesting is the attention which provincial governments have been paying to this workplace issue. Quebec was the first province in Canada to enact legislation prohibiting "psychological harassment," doing so in 2002. Since then, the Quebec Ministry has received thousands of complaints which they are continuing to process. In May of this year, Saskatchewan introduced amendments to its occupational health and safety legislation to expand the definition of harassment to cover bullying and personal harassment. In both of these cases, provincial governments are signaling to employers that this behaviour will not be tolerated and that the government will intervene to protect victims where necessary.

What Does This Mean for Employers?

We know that many employers have already revised their general harassment and human rights policies to incorporate references to bullying and/or personal harassment. However, what we also know is that this simply is not enough. Policies should, in addition to having updated definitions, clearly define a complaints and investigation process so that victims know exactly how to report such conduct. All employees must be trained on such policies and managers should receive specialized training to help them understand how to identify this behaviour (and distinguish it from routine workplace conflict) and understand when employees are triggering a complaint. Employers must take steps to quickly and meaningfully address all complaints brought forward, regardless of the form in which they are presented, and they should keep records of all steps taken. Employers would be wise to work towards a comprehensive implementation process now in anticipation of future governmental and legal activity in this area.