

## Winnipeg Bound! Workplace Investigation Training in Winnipeg March 28-30, 2011

Manitoba amended its *Workplace Safety and Health Act* on February 1, 2011 with respect to violence and psychological harassment in the workplace. This change means that human resources professionals will need to know how to conduct thorough and fair workplace investigations.

Don't know where to start? Uncertain what types of behaviour constitute psychological harassment? No idea what triggers the legal requirement to conduct an investigation or how to write a report?

We can help. We literally wrote the book on conducting workplace investigations ([Human Resources Guide to Workplace Investigations](#)). Over the past few years we have trained hundreds of HR professionals in Ontario and beyond.

Join our inaugural training sessions in Winnipeg, Manitoba for **Basic Workplace Investigation Techniques** on March 28 and 29 and the **Report Writing Workshop** on March 30. Please register early as registration is limited to 25 people.

Please email [seminars@rt-law.ca](mailto:seminars@rt-law.ca) or visit our website [www.rubinthomlinson.com](http://www.rubinthomlinson.com) for more information.

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Employers are always interested in attracting the best employees to work for them. In an effort to do so, they sometimes induce employees from other organizations to join their workplace with promises of greater compensation, promotions and job security. However, the extent to which an employee has been induced to leave a secure position is a factor which may be considered when the court is awarding a reasonable notice period. A recent case, *Dias v. Paragon Gaming EC Company, 2010 ABPC 390*, provides an example of just how important the role of inducement can be in determining a reasonable notice period.

## Inducement

Mr. Dias worked at ABS Casino for approximately 16 years. He was hired as a dealer but, due to a series of promotions, he held the position of Games Manager when he ended his employment there. Mr. Dias left ABS Casino to work for Paragon Gaming at the River Cree Casino, also as a Games Manager.

Two years before the River Cree Casino opened, Mr. Dias had been contacted by representatives of Paragon Gaming. He was enticed to leave secure employment with ABS Casino in exchange for more money, more benefits, a larger bonus and a promise of opportunity for advancement. Although Justice Ingram did not specify the representations or discussions that led to the inducement, he did say that the evidence showed that Paragon Gaming set out to hire the best and most qualified people for its new casino. As part of this process, they contacted key people in the industry and targeted the employees that they wanted, including Mr. Dias.

On August 14, 2006, Mr. Dias began

working with Paragon Gaming. Eighteen months later he was terminated without notice and without cause. Mr. Dias was given one week of pay in lieu of notice as required by the *Employment Standards Act, 2000*. He sued Paragon Gaming for damages based on their failure to give reasonable notice of termination.

As a starting point for determining the notice period, Justice Ingram considered Mr. Dias's age, his length of service, his character of employment and the availability of similar employment. Based on Mr. Dias's age (41 years old), his mid-management position, his short length of service with Paragon Gaming and the fact that similar employment was not immediately available within the industry, Justice Ingram would have awarded two months of reasonable notice.

However, when determining the reasonable notice period in wrongful dismissal cases, the court may also consider any other factors that it considers relevant. Justice Ingram

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**“The Court must recognize that an employee who leaves one position to take another assumes the risk that the new position will not be as secure as the position previously held.”**

## Inducement

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“[H]aving regard to the circumstances of the Plaintiff’s hiring in this case and the reasonable expectation that he had from the representations made to him at that time, a period of two months is grossly inadequate.”  
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found that the inducement of Mr. Dias from his secure position with ABS Casino was the single most important factor in deciding the reasonable notice period in this case. As a result of the inducement, Mr. Dias gave up the reasonable notice period to which he would have been entitled to with ABS Casino given his length of service there. Justice Ingram stated that a reasonable notice period of two months would be “grossly inadequate” because of Mr. Dias’s inducement. A notice period of four months was held to be more appropriate.

### What does this mean for employers?

#### 1. When terminating an employee, be mindful of the inducement factor

It is always worth checking the circumstances of hiring when preparing an employee’s severance package to see if inducement is a factor which needs to be considered. This is particularly so if terminating a short-service employee for whom the “inducement effect” is likely to be more pronounced.

#### 2. Address the issue of inducement at the beginning of the employment relationship

Employers who wish to avoid additional liability for inducement should address the issue at the beginning of the employment relationship. Any agreement regarding inducement or credit for prior service should be put into the employment contract. Even if an employee has not been induced into employment, employers would be well advised to include a provision in the employment contract to this effect.

#### 3. Efforts to induce a prospective employee should not include promises that the employer cannot keep

If inducement of an employee brings with it representations that are misleading about the position, these representations can also form the basis for a separate negligent misrepresentation claim. If a promise is subject to a condition, the employer should make these intentions clear before hiring the employee and also include them in the employment contract. ●

## UPCOMING EVENTS

The third edition of *For Better or For Worse: A Practical Guide to Canadian Employment Law*, co-authored by **Justice Randall Scott Echlin** and **Chris Thomlinson** and published by Canada Law Book, will be available next month. [Click here to order your copy.](#)

### March 3 - Last Chance to Register

Join us for **Advanced Workplace Investigation Techniques** in Toronto on March 3. Contact us to register on (416) 847-1814 or visit our [website.](#)

## 60 Minutes with RT

Did you miss out on registering for our latest teleseminar, **What’s New on Psychological Harassment: A Legislative and Case Law Update?** [Contact us](#) to order an audio copy of this session, or any of our previous teleseminars, for \$99. Topics include:

- An Update on Social Networking and Internet Use;
- Job Offers and Alternative Work Arrangements;
- Workplace Violence and Harassment Essentials;
- Are you ready for Bill 168?

60 Minutes with RT will return on April 5 with **Temporary Foreign Workers and the Law**. Keep an eye on our [website](#) for details and registration.