

## Workplace Investigation Training in Halifax October 18-20, 2011

Janice and Chris will be travelling to Halifax to conduct Basic Workplace Investigation Techniques and the Report Writing Workshop from October 18-20, 2011. Minimize the risk and protect your workplace by learning how to conduct thorough investigations with Canada's leading workplace investigation experts.

We offer a comprehensive workplace investigation technique curriculum to support professionals at all levels of skill and experience. We'll prepare you to conduct your own investigations through hands-on practical training designed to meet the challenges facing your institution's investigators.

Make sure to register early as registration is limited to 25 people.

To find out more about our training in Halifax or our upcoming sessions in Toronto, please visit our [website](#).

### Accessibility for Ontarians with Disabilities Act (AODA)

As of January 1, 2012, private sector organizations will be expected to comply with the *Accessibility Standards for Customer Service (O. Reg 429/07)*. This regulation makes Ontario the first province to implement mandatory accessibility standards. Among the obligations are policy, training and reporting requirements and employers can be penalized for non-compliance. [Contact us](#) to find out more about the [Accessibility for Ontarians with Disabilities Act](#) or about how Rubin Thomlinson can help you with your training or policy needs. To read about our AODA Teleseminar, see page 2.

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.

A recent adjudication decision, *LaBranch v. Treasury Board (Department of Foreign Affairs and International Trade)*, gives employers some insight into their responsibility to investigate incidents of harassment and/or discrimination in the workplace where the employee does not file an official workplace complaint, but instead communicates to the employer in a more general way, her concerns about experiencing harassment and discrimination in the workplace.

## Labranch v. Treasury Board

The employee, an observant Jewish woman, was working on a temporary secondment at Passport Canada. While there, she experienced the following:

- An onerous change in policy with respect to justifying absences related to religious observances;
- Upon being asked to attend a conference which ended on the beginning of Shabbat, the employee requested and obtained approval to extend the trip to accommodate her religious observance. Following her return, the employee was accused of having violated the employer's travel policy and was asked to reimburse her expenses for her "weekend getaway";
- Comments made with respect to how the employee was isolating herself by not participating in "dress down" Fridays and not attending group outings in popular restaurants;
- A request that she explain the meaning of her Jewish observances in a staff meeting in order to reduce complaints about her.

Subsequent to all of this, the employee's managers received a number of anonymous, threatening and anti-Semitic letters, including an email that originated from outside the organization. This communication was directed against the employee, and contained information of which only a small group of people within Passport Canada had knowledge.

The employee was advised of the letters and sent home on an administrative leave. She later e-mailed several people (including management) at Passport Canada, voicing her concerns about the anonymous correspondence and outlining a chronology of incidents of discrimination that she experienced in her employment (including those acts described above). She specifically requested that the employer address the incidents and provide her with a safe workplace. She also identified herself as a "victim of anti-Semitism".

Passport Canada conducted what it

referred to as an "administrative" investigation, the purpose of which was to determine who was responsible for the anonymous complaints. No one communicated with the employee during the course of the investigation. The employee's concerns regarding anti-Semitism were not pursued by the employer.

As far as the "administrative" investigation that Passport Canada did do, the employee was advised that her employer had been unable to establish the source of the anonymous letters and emails and that there would be no other investigation unless new facts arose. Despite the fact that the correspondence contained evidence that the originators of the correspondence had information known only to those internal to Passport Canada, management discounted the anonymous letters indicating that they had no obligation to investigate threats from outside the agency.

The employee filed a grievance. She argued, amongst other things, that the failure to investigate her concerns regarding harassment and discrimination, had the effect of violating her rights under the collective agreement and the Canadian Human Rights Act.

By way of response, the employer indicated that it did not identify the employee's email and chronology as a formal discrimination complaint and as a result it did not have a responsibility to conduct an investigation into the incidents. The Adjudicator did not agree. With respect to the employer's duty to investigate in these circumstances, the Adjudicator stated the following:

"While the grievor could have perhaps acted more formally, this does not relieve the employer from its responsibility to investigate a situation plainly presented to it. Eliminating discrimination in the workplace is the responsibility of the employer, not the grievor. The employer must address an employee's concerns as soon as they are raised. In addition, the employer

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## Labbranch v. Treasury Board

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must actively implement effective mechanisms to monitor discriminatory conduct when it is brought to its attention *as well as investigate* and remedy all incidents of discrimination. The employer cannot simply invoke a zero-tolerance policy for workplace discrimination and hope for a discrimination-free work environment, yet do nothing to achieve it.” [our italics]

With respect to the employer’s argument that they had no obligation to properly investigate the anonymous letters because they were threats from

outside the agency, the Adjudicator stated the following:

“As much as the employer would like to believe that it cannot be responsible for the discriminatory actions because it could not identify the perpetrator of the anonymous correspondence, the employer could not ignore that the discrimination... [was] work related.”

The Adjudicator therefore found that the employer was obligated to investigate all incidents (anonymous or not) and complaints of discrimination and harassment. Because it failed to do so, the employee was entitled to damages. ●

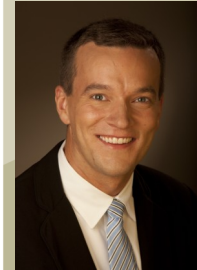
### WHAT DOES THIS MEAN FOR EMPLOYERS?

1. This case reinforces an employer’s requirement to investigate all conduct and behaviour that is suggestive of workplace discrimination and harassment, regardless of the manner in which information relating to such conduct and behaviour comes to its attention. It is obviously preferable for employees to come forward with a formal complaint, because it clearly communicates to the employer that it must respond. However, as this case shows, there are occasions short of filing a complaint, when an employer is effectively put on notice of problematic behaviour because it simply receives the information. It is that receipt of information that triggers the obligation to investigate.

2. This case also illustrates the particular challenges employers face when dealing with a matter of inappropriate workplace behaviour, where the person responsible may be outside of the organization, or simply cannot be identified. While it may be that in this type of presentation, the wrongdoer may never be revealed, the possibility of this outcome does not in and of itself, absolve the employer from investigating, and at least attempting to address the situation. In our view, this obligation would equally apply to situations in which the employer receives an anonymous complaint, in which harassment and or discrimination is claimed to have occurred. The employer must still make an attempt to investigate the behaviours or conduct that is alleged to have taken place.

## What’s New at Rubin Thomlinson LLP

### Welcome Cory Boyd!



We are pleased to announce that Cory Boyd has joined Rubin Thomlinson to continue his practice in workplace investigations and human rights. Cory has conducted workplace investigations into allegations of discrimination,

harassment and inappropriate conduct, including complex investigations of systemic workplace practices in both unionized and non-unionized environments for over 10 years. Cory will be supporting our investigation and training practice.

Contact Cory 416-847-1814 or [cory@rt-law.ca](mailto:cory@rt-law.ca)

## 60 Minutes with RT An Update on the Accessibility for Ontarians with Disabilities Act September 16, 2011 12 noon

As of January 1, 2012, private sector organizations will be required to comply with the “Accessibility Standards for Customer Service”, as part of the *Accessibility for Ontarians with Disabilities Act*. This regulation makes Ontario the first province to implement mandatory accessibility standards. Organizations will need to create policies, comply with reporting requirements and most importantly train their employees. Employers can be penalized for non-compliance. Join Janice Rubin and Cory Boyd for an informative hour-long discussion that will help you and your workplace prepare for the changes. Our interactive discussion will include:

- An overview of the AODA compliance framework;
- How to prepare and train your employees for compliance with the Accessibility Standards for Customer Service;
- Guidance on what your policies should include;
- What the reporting requirements are; and
- What resources are available to help your workplace become compliant.

[Contact us](#) for registration details. Train up to four employees for \$99. Please note that the \$99 fee allows access to one phone line only.