

## Members Quarterly

Winter 2016 Edition

### Feature

# Sexual Harassment in the Workplace

*Good lessons to learn from bad behaviour*

Sexual harassment in the workplace became national news when the CBC terminated the employment of its “star” radio host Jian Ghomeshi. Unfortunately, Ghomeshi was far from the last episode of sexual harassment to make national headlines this year. Since Ghomeshi, a Hydro One employee was terminated for sexually harassing a reporter on live television at a soccer match, a businessman made sexual comments to a female comedian hired to perform at a trade event at a country club, military cadets cat-called a speaker from the Ontario Coalition of Rape Crisis Centres and retired Supreme Court of Canada Justice Marie Deschamps issued a scathing report on sexual misconduct and harassment in the Canadian Armed Forces.

These high profile events highlight the need for human resource professionals, managers and in-house counsel to ensure that their workplaces have appropriate mechanisms and policies in place to deal with inappropriate sexual conduct.

The CBC commissioned a workplace investigation and report following the Ghomeshi scandal (CBC Workplace Investigation Regarding Jian Ghomeshi, April 13, 2015). The report identified several weak systems and procedures within the CBC and also missed opportunities to investigate. A number of recommendations were made in the report and while many of these were specifically tailored for the CBC, there are at least three recommendations that all employers can benefit from in reviewing their own workplace policies and procedures.

### **Review and Clarify Policies**

The policies in place at CBC were reviewed and recommendations were made to clarify them. Changes were suggested to the existing Anti-Discrimination and Harassment Policy so that the policy would include definitions of “workplace” and “poisoned work environment”, provide guidelines of consensual relationships at work and outline what managers are required to do when in receipt of information that suggests the policy was breached. It should also provide clear guidelines for when the CBC would launch an investigation under the policy in the absence of a formal complaint.

The CBC also did not have a stand-alone Respect at Work Policy. The Collective Agreement contained a broad Respect at Work article that was not expanded upon. A separate policy was recommended with expanded definitions and clarity that would offer protection to all CBC employees, including those not represented by a trade union.

### **Training**

The report highlighted that while CBC employees received training on sexual harassment, the training was “off the shelf” and not geared to individual issues that may arise with particular



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groups of employees and managers. It was recommended that all employees be trained on CBC's updated policies and that the training be customized. Employees and managers responsible for administering policies require a heightened level of training. Managers must also be trained on how to receive and respond to concerns and complaints. The report also recommended specific training for all employees on what to do if they observe inappropriate workplace behaviour but are not themselves the target.

#### **Workplace Investigations**

Improvements were suggested to CBC's process for conducting workplace investigations, particularly surrounding training and record keeping. Not all employees responsible for workplace investigations had been trained. Staff conducting and supervising investigations should be trained in the investigation process and retrained regularly when changes are made. Training on investigations should focus on the dynamics of workplace sexual harassment and also on how to prepare a report. Proper record keeping of past investigations should also be kept.

#### **Ontario Legislative Changes on Harassment and Sexual Harassment**

In the wake of the Ghomeshi scandal, the Ontario Government publically addressed the issue of harassment and sexual harassment and proclaimed that it would take policy and legislative steps to combat the problem. In March 2015, the province published a report titled "It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment." The Action Plan outlines the dangers of sexual harassment in the workplace and outlines several areas in which the provincial government intends to combat the problem. The main legislative changes proposed are amendments to the *Occupational Health and Safety Act*.

The details of the legislative amendments are not yet finalized. However, the Action Plan outlines an intent to amend the *Act* to include a definition of sexual harassment, set out explicit requirements for employers to investigate and address harassment complaints and include an obligation for employers to make every reasonable effort to protect workers from harassment in the workplace.

The Action Plan also promises to create a new "Code of Practice" for employers under the *Act* that will outline the steps that employers can take to comply with the law and to publish educational materials to assist employees and employers with dealing with harassment.

Every employer should keep a close eye out for these coming changes which are anticipated in fall 2015. Updates on the legislative amendments and publication of educational materials can be found on Ontario's website: <http://www.ontario.ca/itsneverokay>.

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