

ROEBOTHAN
McKAY
MARSHALL

PERSONAL INJURY LAW

Harassment in the Workplace Legal Considerations

- Harassment Complaints are wildcards in employment law
- Difficult to predict outcome at court
- Option to sue or commence Human Rights complaint
- Expense is a factor

Lawyer's Role

- A Harassment Policy should be transparent and consistently applied throughout the organization.
 - Issues for smaller municipalities
- Interviews must be completed with the complainant and the alleged harasser.
- Neither the employee nor the harasser should fear reprisals from participating in the interview process.
- Municipalities should promote and enhance awareness of the harassment policy.

Transparency, Fair Process and Awareness

- Employers have a legal duty to investigate complaints of harassment and sexual harassment and failing to do so can lead to stand-alone liability.

Legal Duty to Investigate

- The investigation of a harassment complaint is one of the most **crucial** parts of the process. Some steps to follow include:
 1. Obtain a written detailed complaint
 2. Review the complaint and determine all allegations
 3. Choose an experienced impartial investigator, if possible
 4. Conduct the investigation as soon as possible and ensure it is **strictly confidential**
 5. Except where otherwise impossible, obtain signed written statements by parties and witnesses
 6. Allow the parties to be accompanied during the interviews
 7. The interim report will contain only allegations and facts
 8. The final report should contain the allegations, facts, analysis and a conclusion as to whether each of the allegations is founded or unfounded

Investigation

- There are a range of sanctions that can be implemented:
 - A written letter of apology to the complainant
 - Requirement to participate in harassment sensitivity training
 - Verbal warning
 - Written letter of warning
 - Suspension with or without pay
 - Demotion
 - Termination

Sanctions

- Section 6 of the *Municipal Affairs Act* SNL 1995 c. M-20.1 as amended
- Constructive Dismissal

Sanctions Against Councillors

- *Blair v. Knorr & Associates Ltd.*, 2010 CarswellAlta 605, 2010 ABQB 218
- *Menagh v. Hamilton (City)* 2005 CarswellOnt 4961, [2005] O.J. No. 4304

Case Law

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Questions?

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