



As of
2013

At Issue:

The Benefits of External Workplace Investigations

Kevin is the author of the employment law chapters of CCH's Ultimate Corporate Counsel Guide



A recent decision of the Ontario Human Rights Tribunal dismissed an application on summary hearing based on the findings of a workplace investigation completed by James Heeneey, a partner at Robinson Heeneey. The Tribunal held that given the facts, there was no reasonable prospect of the applicant succeeding.

May 7 & 8,
2013

In *Martinez-Cedeno v. Martens, 2012 HRTO 2320*, Centennial College received a complaint from Ms. Martinez-Cedeno alleging harassment by a student and fellow professor. Given the severity of the allegations, the College retained James Heeneey to perform a neutral third party investigation. The evidence collected, which involved the interviewing of staff and students, did not support the allegations made by the Applicant. As such, the investigation report concluded that the complaints were not substantiated.

James spoke at the 14th Annual Employment Law Summit



Ms. Martinez-Cedeno then filed a Human Rights Application. During the summary hearing, Ms. Martinez-Cedeno alleged the investigation was flawed. She contended, among other allegations, that an interviewee in the investigation process had felt "intimidated" and "did not feel the process was fair". In dismissing the Application without the need for a full hearing, the Tribunal relied on the findings in the investigation. The Tribunal held in part:

...the fact remains that, as with Student 2, Student 3 simply has no direct evidence to provide to indicate that the respondent did or said what is alleged. This is something that may not have been apparent in the context of an informal discussion in an office, *but became apparent through probing by an experienced investigator and would equally be apparent at any hearing.*

July 9,
2013

As a result, the application was dismissed without the need for a full hearing.

James Heeneey and Kevin Robinson presented on various employment law topics at the Osgoode Certificate in HR law for HR professionals



Lessons For Employers

In the case above, the employer was able to avoid a human rights hearing based in large part on the findings of a properly conducted investigation and a well-written report. Dealing with workplace complaints can be difficult. When confronted with workplace complaints, employers are well advised to:

- Ensure that proper investigation process is followed and documented.
- Slow down! While timeliness is a hallmark of a good investigation, do not sacrifice proper process in order to conclude the investigation more quickly.
- Consider retaining an experienced external investigator where allegations are complex, involve serious allegations or involve senior employees

Stay Tuned

In our next issue, we will look at the duty to accommodate

