ROBINSON HEENEY LLP

RH on HR

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University avoids liability by conducting reasonable investigation

It is well established that employers are legally obligated to investigate certain complaints in the workplace, including those involving human rights. The Human Rights Tribunal of Ontario's decision in Morgan v. University of Waterloo and David MacKay not only reiterates the importance of conducting an investigation into human rights complaints but also indicates that following a reasonable investigation process, even if it is not perfect or a different finding was possible, may reduce, if not eliminate, the damages faced by an employer.

The applicant worked in the University of Waterloo as a counsellor in the counselling services department. She alleged that a male co-worker sexually harassed her while they were attending a dinner and dance at a conference when he approached her and, despite her indication that she did not want him to touch her, put his arm around her waist and then slid his hand to her bottom. The male co-worker denied the allegations. The applicant reported her allegations to the University. She also filed a complaint with the police. The applicant complained again about further conduct from the co-worker that she believed constituted sexual harassment and reprisal.

The University could not commence its investigation until the police investigation was complete but did so promptly once the police investigation was concluded. The University investigation took approximately 6 months and, based on the evidence, the University concluded that "the investigation revealed no direct evidence to substantiate [the applicant's] allegations of sexual harassment and thus, no firm conclusions were reached". With respect to the University's investigation, the applicant alleged, among other things, that the investigation did not appropriately deal with her complaints because it determined that there was not enough evidence to substantiate her allegations, it took too long, was inadequate, unreasonable, the conclusion was wrong and, as a result, the University had not satisfied it's duties under the Human Rights Code to investigate.

The Tribunal held that the applicant had been sexually harassed at the dinner and dance and also held that the individual respondent was solely liable for the damages. Further, the Tribunal held that the University's investigation and response to the allegations was reasonable and the University had met its obligations under the Code to investigate. More specifically, the University had considered the applicant's allegations seriously and took steps to minimize the applicant's contact with the accused male co-worker during the investigation. Although the investigation was a lengthy process, the Tribunal held that it was reasonable given the comprehensive nature of the process. The investigation was conducted pursuant to the applicable policy and by a human right specialist who conducted approximately 12 interviews and prepared a report. The report was then properly considered by another internal party who made a conclusion, which the Tribunal held was reasonable in the circumstances.

"... the duty to investigate requires that a respondent take reasonable steps in response to an allegation of discrimination."

While it goes without saying that it is important that investigations are conducted using proper process and in an objective manner, the decision of Morgan v. University of Waterloo and David MacKay is noteworthy to employers because the university avoided liability in part by conducting a reasonable investigation even though the finding of that investigation was different from the Tribunal's conclusion on the same matter. Also, the individual respondent was held responsible for the damages awarded at the Tribunal.

February 17, 2015

Kevin Robinson will be speaking at Osgoode Hall on workplace investigations.