



As of  
2013

*At Issue:*

Harassment in the Workplace

Three employment law chapters of CCH's Ultimate Corporate Counsel Guide, authored by Kevin Robinson, have now been released.



Oct. 22,  
2013

James Heeneey will be speaking at the 14th Annual Employment Law Summit on the topic of Employment Insurance ("EI").



Jan. 22,  
2014

James Heeneey will be speaking at an HRPA event on January 22, 2014 providing an employment law roundup for 2013.



A recent, precedent-setting decision of a Tribunal assembled by McMaster University (the "Tribunal") to hear serious allegations of harassment in the work place demonstrates that harassment complaints have traction, and can attract serious consequences in a post-Bill 168 world and outside of the *Human Rights Code*.

James Heeneey successfully represented the parties identified as Complainants B before the Tribunal. Complainants B included seven faculty members and one staff member who alleged that six other faculty members, who were senior and mostly tenured, had harassed and discriminated against them and were responsible for a poisoned academic/work environment that existed at the business school. Complainants B, all without tenure at the University, further alleged that they had been the subject of vexatious comments and conduct and that the Respondents used their positions to negatively impact their careers and to negatively influence the work environment. The hearing before the Tribunal lasted for three months with 21 extended hearing days, 2,694 documents produced and 65 witnesses.

The Tribunal found that each individual Respondent had engaged in comment and/or conduct that led to findings that the McMaster University Anti-Discrimination Policy (the "Policy") had been repeatedly breached. The breaches of the Policy and instances of harassment that were found to have perpetrated by the individual Respondents against Complainants B included various comments and conduct as well as, most shockingly, negatively interfering with the career progression, including the tenure and promotion process, of Complainants B, who were perceived supporters of the senior administration.

As a result of the findings against them, the Tribunal handed down the following sanctions to the Respondents:

- Although termination of employment was seriously considered by the Tribunal, ultimately suspensions were recommended, lengthy for three of the Respondents, without pay, benefits, privileges or access to the University's premises during the suspension.
- A formal written reprimand for the sixth Respondent and the Tribunal's decision to remain in the individual's record for five years.
- Immediate removal from positions of authority where the Respondents could potentially affect the terms and conditions of employment of anyone in the Faculty as well as a prohibition from holding any such position for a minimum of five years.
- Mandatory Sensitivity, Harassment and Conflict Resolution Training for all Respondents.

The Tribunal noted that, although Complainants B often felt like they were being treated inappropriately, at the time, they did not have specific knowledge or proof of the extent of the ulterior motives and mistreatment. This meant that their concerns were not easily articulated and also would not have been reasonably apparent to a third party. It is definitely not an easy task to stand up to harassment and bullying in the workplace, especially against those people who are in a position of power. The Complainants in this case stood up to the harassment and bullying against them by colleagues who were in much senior positions and the conduct which they objected to was found to be unlawful and poisonous to the workplace. The Tribunal's decision highlights that triers of fact will scrutinize allegations and the context around them very carefully in order to determine whether harassment and/or a poisoned work environment exists, and that serious steps will be taken and penalties imposed where necessary to prevent the harassment from continuing.

While McMaster University was also named as a Respondent, the Tribunal found that the University had not engaged in harassment or malicious behavior and that they reacted to the alleged harassment as issues arose. McMaster University should be applauded for taking steps to address harassment in the workplace and to prevent such harassment from occurring again.

