

311 Mock Human Rights Trial

Saturday October 17, 2015

8:30 to 10:20 a.m.

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with

Robert Gill & Holly Robertson

AGENDA

- Basics of the Human Rights Code (Ontario)
- Mock Human Rights Hearing

Human Rights Code (Ontario)

Protected Social Areas:

- ∴ Accommodation (housing)
- ∴ Contracts
- ∴ **Employment**
- ∴ Services
- ∴ Vocational associations (unions)

Human Rights Code (Ontario)...

Protected grounds are:

1. Age
2. Ancestry, colour, race
3. Citizenship
4. Ethnic origin
5. Place of origin
6. Creed
7. Disability

Human Rights Code (Ontario)...

8. Family status
9. Marital status (including single status)
10. Gender identity, gender expression
11. Receipt of public assistance (in housing only)
12. Record of offences (in employment only)
13. Sex (including pregnancy and breastfeeding)
14. Sexual orientation

Human Rights Code (Ontario)...

The Code prohibits reprisals.

REPRISAL = punishing someone because:

- ∴ s/he has a human rights complaint, or
- ∴ because s/he says s/he witnessed discrimination

Mock Hearing: **The Employer**

Dave Company (“Dave Co.”)

- ∴ Manufactures and maintains elevator components
- ∴ Privately owned, headquartered in New York and subsidiary corporations in Ontario and Asia
- ∴ 175 employees

Mock Hearing: **Dave**

- ∴ Sole owner, CEO, and President of the Board of Directors
- ∴ All senior management report to Dave
- ∴ American, moved to Ontario in 2010
- ∴ Married for many years, recently separated

Mock Hearing: **Mary**

- ⋮ Employed since 2001
- ⋮ Corporate Controller, Director of New York and Singapore offices, reports to Dave
- ⋮ Earns \$125,000 per year, plus company benefits and RRSP plan
- ⋮ Receives a \$10,400 annual bonus, if company performs well

Mock Hearing: **You**

- ⋮ Human Resources Manager

What do you do?

- › **Nothing:** there is no complaint. Dave and Mary have resolved the matter themselves. Business as usual.
- › **Talk to Mary:** no need for an investigation, but you want to understand what happened.
- › **Start an investigation**

What do you ask Mary?

What do you do with the information?

- › **Nothing:** the matter is fully resolved.
- › **Issue a letter to Dave:** admonishing him for his behavior and caution him about future conduct.
- › **Send Dave to Human Rights training**
- › **Arrange for Human Rights training** for the whole organization.

One month later.....

- › Mary updates you on the situation.

What do you do now?

- › **Nothing:** Dave and Mary have worked it out themselves.
- › **Speak to Dave**
- › **Start a formal investigation**

Six Months later.....

Litigation ensues!!

HRTO complaint alleges:

- sexual solicitation
 - s. 7(3)(a) ▫ a solicitation
 - person in a position to confer or deny a benefit
 - conduct reasonably known to be unwelcome
- sexual harassment
- reprisal
- lost wages
- damages for loss of dignity and respect

What do you need to do to respond?

- Legal theory of your case
- Documents
- Witnesses
- Mediation
- Preliminary matters, if any

Mary's evidence at the hearing

- Dave tried to kiss me. I pulled away.
- He was embarrassed and became awkward.
- I wanted things to go back to normal but he couldn't interact with me.
- He stopped mentoring me.

Mary's evidence at the hearing (continued)

- I tried to resign; Dave asked me to stay, promised things would be the way they were before.
- Then Dave told me that I could only talk to him about business and only if other people were around.

Mary's evidence at the hearing (continued)

- I tried to resign again but he talked me out of it saying things would get better.
- The situation was so stressful and things did not get better.
- Dave added duties, then took them away.
- Criticized my performance.

Mary's evidence at the hearing (continued)

- I was forced to resign.
- I worked out my notice period because it was the right thing to do.
- My last day of work was horrible.

Mary's evidence at trial

- I earned \$125 K per year, a \$10 K bonus and had benefits.
- Two months after leaving the company, I got a six-month contract paying \$50 K.
- The job became permanent. I earn \$120 K per year and a potential bonus of up to \$15 K

Impact evidence by Mary's boyfriend

Bill testified that:

- Mary was frequently tearful
- Mary was focussed on work and how the relationship between her and Dave had fallen apart
- Mary was very hurt by what happened

You decide!

- ... Sexual harassment?
- ... Sexual solicitation?
- ... Reprisal?
- ... Monetary award, if any?

Questions?

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