Handling Anonymous Complaints – Lessons From Case Law

When it comes to anonymity in workplace investigations, there are various facets. One of our partners, Liliane Gingras, recently wrote a blog about the risks of promising complainants a guarantee of anonymity throughout the investigative process.[1] However, I would like to talk about situations where complaints are made by individuals who are completely unknown to the employer. These cases can raise some seriously difficult challenges for investigators and employers.

There is surprisingly little case law devoted exclusively to investigating anonymous complaints, but the cases we found do contain some interesting insights as to when and how an investigation should be conducted in these circumstances.

Amalgamated Transit Union, Local 508 v. Halifax (Regional Municipality), 2017 CanLII 10897 (NS LA)

An anonymous complaint was submitted regarding a Facebook post and related responses made by bus drivers in Halifax. The grievor's response to the post was interpreted as speaking derogatorily of members of a majority Black community, North Preston, in Nova Scotia. The grievor was terminated from employment on the basis that she had a prior disciplinary record and had expressed no remorse for her comments.

The union grieved the discipline arguing that it was the employer's practice not to investigate anonymous complaints. The Arbitrator found, however, that there was no such blanket agreement, but rather, that the employer's approach was dependent on the particulars of the complaint. They found that "it was reasonable for the Employer to investigate the anonymous complaint," noting that "[t]here are anonymous complaints that could be capable of being investigated and which would be sufficiently serious to warrant investigation." There was no dispute about whether the posts were made by the employees involved and the content was available to be assessed. While the letter of complaint was anonymous, the subject matter of the complaint was not conjecture or rumour.

The Arbitrator further noted that, even if the anonymous complainant was insincere or acting with ulterior motives, it was reasonable to assume that people reading the posts, particularly residents of North Preston, could be offended or upset. There was also no need to investigate who wrote the letter of complaint as the anonymous letter

was not relied on for the truth of its contents, but rather, it simply pointed to the offensive posts which were the actual subject of the complaint.

Insight: Where the issue raised by an anonymous complaint is serious and there are enough particulars provided, subject to the employer's policy requirements and the underlying statute, it is reasonable to investigate the specific concern, even if the employer does not seek to identify the anonymous complainant.

Roache v. Rogers Communications Canada Inc., 2017 CanLII 153514 (CA LA)

The employer received an anonymous complaint regarding sexual and other inappropriate comments that the complainant in this case made in the workplace. An investigation was conducted, and the complainant was terminated from employment. The complainant challenged the dismissal as unjust, but it was upheld by the Adjudicator.

One point of challenge was that there had been no past disciplinary attempts to address the problem even though the behaviour had been taking place for some time. The Adjudicator noted that this was the case because the conduct came to the employer's attention through their anonymous reporting system. However, once they became aware, they investigated and then took disciplinary action in accordance with their policies based on the seriousness of the conduct.

Insight: The fact that a complaint is made anonymously does not obligate an employer to be more lenient or engage in progressive discipline when a clear and serious breach of its policies is discovered.

Khumbah v. Community Living Alternative Services Ltd., 2022 AHRC 91 (CanLII)

The complainant, a Black man, alleged that the organizational respondent discriminated against him in employment on the basis of his race. The complainant worked with complex clients with developmental disabilities and mental health issues. The environment itself was a difficult one as the clients sometimes exhibited violent and disturbing behaviour. A new supervisor (a white woman) was appointed whom the complainant and other employees did not like. The complainant and his witnesses indicated that they heard from clients that the new supervisor had an agenda to replace all the Black workers.

The organizational respondent received an anonymous email complaining about several issues, including the alleged racist agenda of the new supervisor. In response, the respondent removed the new supervisor, both for her safety and for morale in the workplace but kept her employed within the organization. The respondent also emailed all workers to encourage the writer of the anonymous email complaint to come forward with a formal grievance so that the respondent could investigate, but no one did. Additionally, the respondent held a staff meeting to try and address the concerns raised in the email and interviewed the new supervisor who denied the allegations.

One of the complainant's arguments was that the respondent failed to meaningfully address the allegations in the anonymous email complaint, which showed a lack of support for racial minorities in the workplace. The respondent argued that the racial allegations in the email were too general to pursue without more detail coming through the formal grievance process. The Tribunal agreed, noting that "[t]he email's racism allegations were shocking but without specific particulars."

Insight: Where an anonymous complaint is made without enough particulars to investigate, employers may take interim measures deemed necessary in the specific context and should encourage employees to come forward with specifics, but there is no obligation to formally pursue such complaints.

Ferris v. O.T.E.U., Local 15, 1999 CanLII 35191 (BC HRT)

An anonymous complaint was made against a transgender employee's use of the women's washroom. (The transgender employee was the complainant in this proceeding.) The employer called a meeting with the union to discuss the anonymous complaint, which the complainant did not attend. While waiting half an hour for the complainant to show up, neither the employer nor the union tried to contact her or even determine if she had been notified of the meeting. The employer subsequently reprimanded the complainant for non-attendance, which ended up being the first time she had heard about the meeting and the fact that an anonymous complaint had been made against her. This led to her resigning.

The Tribunal noted that the union representative did not contact the complainant at any time during the two weeks before the meeting to notify her of the anonymous complaint, hear her side of the story, or discuss how the union should respond to the employer regarding the complaint. In fact, the first time the union representative spoke to the complainant was when she (the complainant) called him.

Additionally, evidence was provided to the Tribunal that there was no actual problem as the women's washroom was only used by one person at a time and was controlled by a key, with the user locking the washroom while inside. Had the union spoken to the complainant, they would have known this and would have been able to appropriately respond to the employer. Instead, the union simply acquiesced to the employer's treatment of the anonymous complaint as legitimate and its implicit characterization of the complainant as "a problem who required some accommodation." (The employer settled the complaint against them before this hearing.)

The Tribunal found that the union's departure from minimal standards of treatment of a member could not be ascribed to anything other than her gender identity and was therefore discriminatory. *(Please note that this is an older case so there is some outdated language, for example, calling the employee a "transsexual" and referring to her gender identity as a disability.)*

Insight: Employers, unions, and anyone involved in addressing anonymous complaints should do their best to ensure that the issue being complained about is a legitimate problem. Although such complaints should not be ignored, they should not be allowed to be used to maliciously target employees.

Employers should bear in mind that at all times, they have an obligation to provide a safe and respectful workplace for their employees, and this should be the paramount concern when determining how to address anonymous complaints.

Footnote

1. Liliane Gingras, "Broken promises: The perils of guaranteeing anonymity to complainants in workplace investigations." August 22, 2024, Rubin Thomlinson's *Insights*, online: https://rubinthomlinson.com/broken-promises-the-perils-of-guaranteeing-anonymity-to-complainants-in-workplace-investigations/.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: Lori-Ann Green

Rubin Thomlinson LLP