Recognizing and Resolving Poisoned Work Environments



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Employees are entitled to work in a respectful environment, free from harassment and discrimination. In circumstances where the work environment deteriorates to such an extent that it may be considered "poisonous" or "toxic", a court will likely find that the employer's behaviour in creating and/or condoning this environment amounted to a constructive dismissal of the affected employee.

A constructive dismissal from employment occurs where an employer unilaterally and fundamentally changes the working relationship, and the individual neither condones nor acquiesces to the change. In the context of a poisoned work environment, the Ontario Court of Appeal has confirmed that except for "particularly egregious stand-alone incidents" a workplace becomes poisoned only with repeated incidents of "serious wrongful behaviour sufficient to create a hostile or intolerable work environment" as assessed from the perspective of an "objective reasonable bystander."

Given this high threshold, it is important that legal advice is sought before any steps are taken in response to a perceived toxic environment. In the event that an individual fails to establish such an environment, having left the workplace, he or she will be deemed at law to have resigned.

Failing to Meet the Bar

A recent decision from Alberta provides an informative case study where an allegation of a poisoned worth environment fell flat. In ***T.L.K. and Serva Group Ltd.,*** the Court of Queen's Bench considered whether an employer had constructively dismissed one of its employees ("TLK") by condoning a poisonous work environment.

TLK was employed by Serva Group Ltd. from February 7, 2012 to August 14, 2013 as an expediter/buyer. On August 9, 2013, TLK covered for one of her colleagues, Mr. Clow, as he was attending a wedding. In order to cover for this colleague, TLK was provided with Mr. Clow's work smart phone.

Once in receipt of the telephone, TLK accessed emails on the device and read messages sent between Mr. Clow and some of her other colleagues. The overall thrust of the emails was that TLK was "crazy" and a "failure." TLK was upset by the emails and brought them to her supervisor, Mr. Welsh.

Mr. Welsh met with Mr. Clow immediately upon his return to work, and Mr. Clow voluntarily apologized to TLK. TLK considered the apology to be insincere. As such Mr. Welsh offered to convene a further meeting with himself and Mr. Clow present. TLK was not interested in attending a further meeting, and shortly thereafter left the workplace, pursuant to a letter provided by a physician.

TLK advised the employer that she could not work in the same office as Mr. Clow. The employer responded that there was no other practical place for her to work, noting that many staff were already sharing offices as space was tight. In addition, the company's Director of Human Resources wrote an email to TLK stating that:

[O]ur desire is that employees treat each other with dignity and respect, and work together as a team. If you experience any issues in the future, you may report them to your manager or to any higher member of management. You may also contact me at any time – my contact information is listed below.

Despite receiving this email, TLK refused to return to work and commenced legal action asserting that she had been constructively dismissed from employment by subjecting her to a toxic work environment. The court rejected this argument, finding that where "an employer who, when advised of a dispute among co-workers, takes reasonable steps that amount to a re-assertion of its expectations of mutual respect and support for the victim of harassment, cannot be said to have introduced any fundamental change to the workplace."

Moreover, the court confirmed that the resolution of workplace issues does not have to be perfect from the perspective of the employee. Rather, employers are expected to provide a reasonable resolution of the issue in question.

Takeaways for Employers and Employees

T.L.K. and Serva Group Inc. provides helpful guidance for employees and employers alike. It confirms the circumstances in which a poisonous work environment may be found, and the reasonable steps that an employer may take to internally resolve such issues.

As discussed above, proving a constructive dismissal due to a poisonous work environment requires an objective assessment of the surrounding circumstances and precipitating event(s). If these circumstances are misjudged, and the employee leaves the workplace prematurely, it may later be found that the individual simply resigned from his/her employment and consequently has no entitlement to severance. Accordingly, if you are an **employee** that is experiencing a negative work environment, it is necessary to obtain legal advice from an employment lawyer prior to any steps being taken.

Employers have an obligation to provide a respectful work environment. Accordingly, it is important to make clear to staff the expected standards at work, and to lead by example. If you become aware of behaviour in the workplace that may create a toxic work environment, it is necessary to take proactive measures to remedy this issue and protect your staff. An employer's obligations in the regard could include conducting an internal enquiry, providing reasonable accommodations and/or implementing discipline in the appropriate circumstances. In order to avoid potential liability, and to maintain staff morale, it is important to act promptly, respectfully and in good faith. If you require assistance in this regard, please contact us directly.

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Prior to founding Vey Willetts LLP, Paul worked at one of Canada's leading labour and employment law firms and at a large energy corporation. He has represented clients before the Court of Appeal for Ontario, the Superior Court of Justice, the Human Rights Tribunal of Ontario, the Ontario Labour Relations Board, and the Canada Industrial Relations Board, in addition to at numerous private arbitrations and mediations. Paul is dedicated to providing his clients with thoughtful, timely and strategic advice. In his spare time, Paul sits on the Board of Directors at Big Brothers Big Sisters of Ottawa, and serves as Chair of the organization's Human Resources Committee.

Vey Willetts LLP *is an Ottawa-based employment and labour law firm that provides timely and cost-effective legal advice to help employees and employers resolve workplace issues in Ottawa and across Ontario. 613-238-4430 or info@vwlawyers.ca*