

Respond Reasonably To Workplace Harassment Complaints



At some point in every workplace, a situation will arise that warrants an internal human rights investigation. The Human Rights Tribunal of Ontario looks closely at how employers respond to harassment complaints. While a flawed investigation can increase the risk of human rights litigation and expose the employer to significant damages, a reasonable response to a harassment complaint can reduce the employer's exposure to liability. In this post, we consider the decisions of the Human Rights Tribunal of Ontario in two decisions dealing with workplace harassment complaints: *Sears v. Honda of Canada Mfg.* and *Morgan v. University of Waterloo*.

Sears v. Honda of Canada Mfg., 2014 HRTO 45

Sears had problems with his vision, including severe myopia and colour blindness. Honda was aware of his disability. In 2010, Honda made changes to appearance of certain computer software that Sears worked on, including changing the colour of text and background. With these changes, Sears experienced trouble reading from his computer screen and this caused him stress and anxiety. Compounding the problem, Sears also complained that a co-worker was harassing him, including by calling him a "blind dog". By December 2010, Sears left work claiming stress.

It took Honda almost a year to put accommodation measures in place. In November 2011, it modified the software to make the onscreen text more legible to Sears. It trained Sears on how to adjust the screen presentation, added some special lighting and magnification, and some other accommodation measures. Nonetheless, three months later when Sears' employment was terminated, he filed a human rights complaint alleging that his dismissal contravened the Ontario *Human Rights Code*. Sears alleged that Honda had failed to accommodate his disability and had failed to take appropriate action in response to his harassment complaint.

It is interesting that Sears had not formally requested accommodation after the initial changes to the computer software caused him problems. But of course Honda was aware of his disability, and the Tribunal picked up on that very point. It found that Honda had failed to meet its procedural duty to accommodate by not inquiring, on its own initiative, whether Sears required accommodation in the circumstances. The Tribunal also noted that Honda had not trained supervisors on their "duty to inquire when a need for accommodation comes to their attention". Nor did it have a written accommodation policy. The Tribunal concluded that Honda had breached the *Human Rights Code* because, even though it had information sufficient to trigger the procedural duty to accommodate, it did not begin to consider accommodation until after Sears had gone on stress leave.

The Tribunal then turned to Sears' harassment complaints. Following its established jurisprudence, it reiterated that the *Human Rights Code* imposes a duty on organizations to investigate complaints, and that a failure to investigate can attract liability, even if the allegations underlying the complaint are ultimately unsubstantiated and dismissed. The Tribunal concluded that Honda's failure to adequately investigate Sears' complaints was incompatible with respect for his dignity. While acknowledging that it was difficult to judge how much of Sears' hurt feelings, anxiety and loss of self-respect could actually be attributed to the employer's failure to address his harassment complaints, the Tribunal accepted that such failure had clearly exacerbated his distress. On that basis the Tribunal ordered Honda to pay Sears \$35,000.00 for these intangible losses.

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