

Setting The Standard: Recent Case Offers Guidance For Workplace Investigations

written by Haley O'Halloran | July 15, 2024



More often than not, we see civil court cases and human rights tribunal decisions that highlight poorly conducted workplace investigations and essentially offer a checklist of what employers should not do. However, in the recent case of *Salanguit v. Parq Vancouver and another*, 2024 BCHRT 119¹ (“*Parq*”), the BC Human Rights Tribunal (“Tribunal”) has provided employers with welcome guidance on how to handle a discrimination complaint and what an effective and reasonable workplace investigation looks like.

BACKGROUND

In *Parq*, the complainant filed a discrimination complaint against her employer, Parq Casino Vancouver, as well as the employee that had allegedly discriminated against her. The complainant complained that during work a colleague who reported to her had mocked and mimicked her speech impediment. The complainant considered this bullying and consequently reported the incident to her employer. In response, her employer investigated the incident over a two-month period, interviewing several witnesses, including at least one eyewitness who corroborated the complainant’s allegation. Upon completion of the investigation, the employer found the complainant’s complaint was substantiated and concluded that the offending employee violated the company’s bullying and harassment policy. The employer then took steps to address the incident as well as steps to prevent it from happening again.

The complainant was unsatisfied with both her employer’s investigation and its response. She subsequently filed a human rights claim with the Tribunal wherein she alleged that the incident was discriminatory, based on her disability. The employer, on behalf of itself and the other named employee, made an application to dismiss the complaint.

DECISIONS

On April 16, 2024, the Tribunal released a decision accepting the employer’s application to dismiss the complaint. In doing so, the Tribunal found that there was no evidence indicating that the bullying complaint related to a personal characteristic that was protected by the Human Rights Code.

The key takeaway for other BC employers is that, as a further and secondary analysis, the Tribunal also evaluated this complaint on the basis of whether the employer had

already taken reasonable and effective steps to remedy or otherwise address the alleged discrimination. The Tribunal asked the following questions to confirm whether reasonable and effective steps were taken:

1. Did the employer take the complainant's discrimination complaint seriously?
2. Did the employer appropriately address the impact on the complainant?
3. Where necessary, did the employer take appropriate steps to ensure the discrimination would not happen again?

The Tribunal was able to answer all three questions in the affirmative. Specifically, for question one, the Tribunal found that the employer acted entirely appropriately upon receiving the complaint by:

- Confirming the complaint and commencing the investigation immediately;
- Interviewing the appropriate parties including the complainant, the offending employee, and the relevant witnesses;
- Issuing a written warning to the offending employee; and
- Requiring that the offending employee issue an apology.

For question two, the Tribunal found that the employer appropriately addressed the impact on the complainant by:

- Connecting the complainant with the company's employee assistance program;
- Accommodating the complainant's medical leave post-incident;
- Acknowledging its duty to accommodate;
- Disciplining the offending employee; and
- Offering to settle the matter for a reasonable sum.

For question three, the Tribunal found that the complainant took appropriate steps to prevent further discrimination by:

- Issuing a memorandum to employees regarding bullying, harassment and discrimination in the workplace;
- Updating its bullying and harassment policy;
- Reminding employees of the company's bullying and harassment policy;
- Warning employees of potential discipline for breaches of the policy;
- Adopting a zero-tolerance position concerning unlawful discrimination, bullying and harassment in the workplace; and
- Requiring that all employees attend an in-person mandatory training session.

KEY TAKEAWAYS

While every complaint and investigation will be unique, employers can learn several lessons from the case of *Parq*:

- Ensure that your company has an up-to-date bullying and harassment or discrimination policy;
- Take bullying, harassment, and/or discrimination complaints seriously by confirming receipt of the complaint and commencing an investigation immediately;
- Undertake a thorough and procedurally fair investigation. At a minimum this must involve interviewing the complainant, the 'offending' party and any witnesses, as well as reviewing any relevant 'evidence' (documents, security footage, etc.);
- Address the impact of the complaint on the complainant in a manner appropriate to the situation (i.e. offering counselling, paid leave, workplace

accommodations, settlement payment); and

- Upon conclusion of the investigation, and if the complaint is substantiated, take the appropriate steps to ensure the discrimination does not happen again (i.e. discipline, updating policies, and training).

Footnote

1. <https://www.canlii.org/en/bc/bchrt/doc/2024/2024bchrt119/2024bchrt119.html?resultIndex=1&resultId=b21719afb21e4d99a61411f2c8001b07&searchId=2024-05-28T14:23:47:730/49e2339e1ea24fbbbe4e99adfb63dd17&searchUrlHash=AAAAAQAmU2FsYW5ndWl0IHYgUGFycSBWYW5jb3V2ZXIgaW5kIGFub3RoZXIAAAAAAQ>

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.

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