

# Workplace Investigation Helps Avoid Costly Litigation



The British Columbia Human Rights Tribunal ("BCHRT") recently dismissed a complaint of discrimination in the workplace, stating that the employer's investigation, and settlement offer, adequately resolved the complaint.<sup>1</sup>

The BCHRT, in reaching their decision to dismiss the complaint, reviewed whether the steps taken by the employer were reasonable and effective. In making this determination, the BCHRT must be persuaded that the employer 1) took the complainant's discrimination complaint seriously; 2) appropriately addressed the impact on the complainant; and 3) took appropriate steps to ensure the discrimination would not happen again.

## *Salanguit v. Parq Vancouver and another*

In this case, an employee of Parq Vancouver ("Parq") filed a discrimination complaint on the basis of disability with the BCHRT against her co-worker and Parq.

Ms. Salanguit, an employee of over a decade, raised a bullying concern with her supervisor on May 22, 2019, regarding a co-worker, Shanna Abonitalla. Sometime later, Mr. Salanguit, who has a speech impediment, learned that Ms. Abonitalla had been impersonating and mimicking her speech maliciously in front of other coworkers. On July 14, 2019, Ms. Salanguit's further advised Parq of Ms. Abonitalla's behaviour, which was claimed to have escalated to discrimination on the basis of disability.

On July 17, 2019, Parq promptly responded to the discrimination allegation by commencing a workplace investigation. Over the course of two months, Parq investigated Ms. Salanguit's discrimination complaint, having interviewed several witnesses, including an eyewitness who corroborated Ms. Salanguit's allegation.

On September 18, 2019, following the conclusion of their investigation, Parq issued a "Final Written Warning" to Ms. Abonitalla advising that her conduct violated Parq's policy against bullying and harassment, and notifying her that any further conduct of a similar nature would result in her dismissal. As a result, Ms. Abonitalla was required to apologize to Ms. Salanguit, which she completed by letter dated September 20, 2019. Parq also offered to facilitate a meeting between Ms. Salanguit and Ms. Abonitalla.

After having addressed the outcome of the investigation with the complainant and

respondent, Parq continued their remedial actions. On October 8, 2019, Parq communicated with all employees in the department where the discrimination occurred, reminding them of the requirement of respectful conduct, and further instructing staff to avoid teasing and excluding co-workers. Parq advised that any such conduct would be investigated and could lead to disciplinary actions. Additionally, in June 2021 Parq reviewed and updated their bullying and harassment policy to include "unlawful discrimination". Employees were then required to attend in-person training for the updated policy.

### **Impact on employers**

This case is informative for employers, as it provides insight into what human rights' tribunals require of employers responding to accusations of discrimination. In dismissing the complaint of discrimination in the workplace, the BCHRT held that the measures taken by the employer were substantial enough to meet the standards of corrective action expected under human rights legislation. The BCHRT highlighted the employer's favourable actions as follows:

*"At the end of the day, the evidence is that Parq **had a policy to deal with the discrimination allegation** and it did so in a **direct and attentive manner**. It is important for the Tribunal to encourage employers to conduct themselves in this way. ... This is especially the case where an **employer demonstrates respect and support for its employee, takes responsibility for its mistakes, and tries to do better...**"<sup>2</sup>*

*[emphasis added]*

### **Takeaways for employers**

Although every case and investigation is unique, this decision provides valuable guidance for employers. To protect themselves from unnecessary litigation, employers should:

- Implement and follow an up-to-date discrimination, bullying and harassment policy;
- Guarantee a thorough and fair investigation that is conducted immediately after receiving notification of an instance of bullying, harassment or discrimination;
  - At the very least, this will include interviewing the complainant, respondent, and any witnesses, in addition to reviewing any relevant security footage, documentation, etc.
- Appropriately attend to the impact of the complaint on the complainant and other affected employees; and
- Take corrective measures to ensure that discrimination, if substantiated, does not occur again. This includes disciplinary measures, implementing and updating policies, and providing employees with adequate training.

### **Footnotes**

1. *Salanguit v. Parq Vancouver and another*, 2024 BCHRT 119

2. *Salanguit v. Parq Vancouver and another*, 2024 BCHRT 119 at para 36.

*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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