

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

BEWARE THE LONG REACH OF THE HUMAN RIGHTS TRIBUNAL OF ONTARIO

Entrepreneurs run a lot of risks. If their corporation goes under, entrepreneurs stand to lose any money they invested, and any loans that they guaranteed. The Human Rights Tribunal of Ontario and the Ontario Divisional Court have now added another risk. If a corporation fails, its owners and managers can be held personally liable for damages awarded against the corporation by the Tribunal.

Michel Leonard and Harry McKeague had a commercial real estate agency. They grew the agency to multiple offices and employed a number of agents. One of those agents was Katherine Farris. Unfortunately, Ms. Farris had a very bad time over her 9 years with the male-dominated agency. She was isolated by her colleagues, who called her names, including "crazy", "psycho", and "bitch". Her co-workers also spread a false rumour that she was having a sexual relationship with Mr. McKeague, who was her boss. Mr. Leonard and Mr. McKeague made some efforts to resolve the matter, at one point even bringing in an outside expert. They did not succeed, and the harassment continued. Eventually, Mr. Leonard and Mr. McKeague concluded that they had to choose between Ms. Farris and the rest of their Toronto office. They terminated Ms. Farris, explaining that she did not work well with others. Although the agency paid Ms. Farris a severance of \$42,000, she still brought the matter before the Human Rights Tribunal of Ontario.

The Tribunal concluded that the agency did not do enough to protect Ms. Farris from the harassment and poisoned work environment, and ordered the agency to pay her \$30,000. By the time the case reached a hearing, however, the agency had been dissolved for several years. The Tribunal initially only held the defunct corporation liable. Ms. Farris challenged that aspect of the decision at the Ontario Divisional Court. The Court sided with her, and instructed the Tribunal to consider personal liability because the corporation had been dissolved. Following the Court's instruction, the Tribunal reconsidered personal liability. Eight years after the agency closed its doors, the Tribunal held its two owners/managers, Mr. Leonard and Mr. McKeague, personally liable for \$22,500 of the \$30,000 award. Mr. Leonard and Mr. McKeague did not harass Ms. Farris themselves. Indeed, Mr. Leonard ran the agency's Montreal office and didn't even work in the same province as Ms. Farris. But the Tribunal held that Mr. Leonard and Mr. McKeague did not act effectively to stop their employees from harassing Ms. Farris and creating a poisoned work environment.

In deciding to find personal liability, the Court and the Tribunal emphasized that the point of the Human Rights Code is to give effective remedies. Where collection against a corporate employer is not possible, the individual managers and owners have a greater personal exposure. Although personal liability under the Human Rights Code has always been possible, the law is now strongly encouraging it where the corporate employer cannot satisfy a damages award.

The decision in this case is a reminder that businesses need to:

- Ensure their officers and directors are appropriately insured;
- Take complaints of harassment and poisoned work environments seriously, by effectively investigating and disciplining reported misconduct; and
- Prevent problems before they start, with appropriate policies and training on harassment and discrimination, including how to handle complaints.

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HR MANAGER'S GUIDE TO INDEPENDENT CONTRACTORS IN THE WORKPLACE

Available for purchase from
Carswell's store.



UPCOMING EVENTS**September 19th**

Aaron Rousseau, Senior Associate at Whitten & Lublin has been invited by the Human Resources Professionals Association to present at their seminar on The Rise of Workplace Stress and Harassment Claims: What Employers Can Do where he will discuss what employers must do to prevent harassment in the workplace, what the legal obligations are and how courts are dealing with harassment complaints. Also, he will provide valuable tips on how to manage employee harassment before situations escalate into costly claims.

Some of the important points that will be discussed include:

- What must employers do to prevent harassment in the workplace?
- What is an employer's legal obligation when a harassment complaint is received?
- How do the courts deal with harassment complaints?

For more information and how to attend, please visit the Human Resources Professionals Association's website.

IN THE MEDIA

David Whitten has been named as a litigator to watch in 2013 by Lexpert, in its "US Guide to Leading Cross-border Lawyers"

Aaron Rousseau , senior associate at Whitten & Lublin appeared on CTV News to comment on the case of an RCMP spokesperson who faces allegations of sexual harassment by a former employee. He discussed the compensation she is eligible for, the outcome in similar cases against the RCMP, and some of the strategic considerations for each side. To learn more, watch Aaron's video on CTV News .

Daniel Lublin and The Globe and Mail have created another video series about severance. In these videos, Daniel Lublin explains when and if an employee is entitled to severance, how to calculate and negotiate it and much more. To learn about severance and the possible entitlements, watch Daniel's videos on The Globe and Mail's website:

Should I negotiate for more severance?

How do I calculate how much severance I'm entitled to?

Sorry, you're not entitled to a right of continued employment

LAW BLOG

More protected leaves for Ontario employees?

How do you calculate severance?

It's not how you look on paper, it's how you look in person

Lack of evidence fatal to employer's claim of breached non-competition clauses

Employee fired after calling in sick to play in softball tournament

Conservative Senators break ranks over labour bill

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<http://blog.toronto-employmentlawyer.com/>

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