



STHI LEGAL NOTES

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BARRISTERS & SOLICITORS • TRADEMARK AGENTS

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Harassment in the Workplace

Over the past several months, the news has been dominated by allegations and admissions of harassment, and in particular sexual harassment, in the workplace. While the majority of these stories have emanated from Hollywood, there are a significant number of similar incidents that have been reported in other industries.

We thought it was timely to review the legislation that governs violence and harassment in the workplace. In Ontario that legislation is the *Occupational Health and Safety Act*.

What is workplace harassment?

Workplace harassment occurs when one person makes unwelcome comments or behaves in an inappropriate way towards another person. This could include, but is not limited to:

- making remarks, jokes or innuendos that demean, ridicule, intimidate, or offend;
- displaying or circulating offensive pictures or materials in print or electronic form;
- bullying; or
- repeated offensive or intimidating phone calls or e-mails.

In situations where a manager or supervisor is simply doing their job it will generally not be considered workplace harassment, e.g. making changes in work assignments, scheduling, job assessment and evaluation, workplace inspections, implementation of health and safety measures or disciplinary action.

In the same vein, differences of opinion or minor disagreements between co-workers will not generally constitute workplace harassment.

Another type of workplace harassment is sexual harassment which is defined in the Act as:

- engaging in a course of vexatious comment or conduct against a worker, in a workplace, because of sex, sexual orientation, gender identity or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- making a sexual solicitation or advance where the person making it is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know the solicitation or advance is unwelcome.

Specific examples of sexual harassment include:

- rough or vulgar humour or language related to sexuality, sexual orientation or gender;
- displaying or circulating sexual images, or offensive sexual jokes;
- leering or inappropriate staring;
- unnecessary physical contact, including inappropriate touching; or
- demanding hugs, dates, or sexual favours.

What are the obligations of an employer?

All employers, who employ six or more employees, are required to have a policy in place with respect to workplace harassment and violence, which must be reviewed annually. The policy must be made known to the employees and be posted in a conspicuous location in the workplace.

Further, an employer is required to act if he receives a complaint. Once an investigation has been completed, the employer must inform the employee who has allegedly experienced workplace harassment, as well as the alleged harasser, in writing of the results of the investigation and any corrective action that has been or will be taken.

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*The articles in **STHI Legal Notes** are necessarily of a general nature and cannot be regarded as legal advice. Our firm will be pleased to provide additional details on request.*

New Year, New Laws

A new year always brings a variety of new laws and 2018 is no different. The following is an overview of some of these new laws.

Employment Standards

In our fall newsletter we provided you a summary of Bill 148. Since then the legislation has passed into law and many of the changes took effect on January 1st.

The various **minimum wages** have increased approximately 20 per cent.

Employees with five years of employment are entitled to three weeks paid **vacation**.

Regardless of how many employees you have, all employees are now entitled to 10 **personal emergency leave** days per year with the first two being paid days.

Employees with at least six months' service are entitled to an unpaid leave of up to 37 weeks to care for a **critically ill** child. They are also entitled to an unpaid leave of up to 17 weeks to care for a critically ill adult who is a family member. This is a change that was added to the final bill.

Family medical leave has been extended to 28 weeks if a qualified health practitioner issues a certificate stating that a family member, which includes a spouse, child, grandchild, parent, sibling, grandparent, aunt, uncle, niece, nephew or in-law, has a serious medical condition with a significant risk of death occurring within 26 weeks or less.

An employee whose **child has died** from any cause is entitled to an unpaid leave of absence up to 104 weeks.

Victims of domestic or sexual violence, or parents of children who have experienced or are threatened with it, will get up to 10 days leave, with the first five days paid and if necessary a second unpaid leave up to 15 weeks.

Employers are now required to keep additional records with respect to their employees. Commencing January 1st employers must keep

- the dates and times that an employee worked; and
- if the employee has two or more regular rates of pay for work performed for the employer and, in a work week, the employee performed work for the employer in excess of the overtime threshold, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay.

The retention period for records of vacation time and vacation pay is now five years.

Visit the publications section of our website for the fall 2017 issue (www.sthilaw.com) which has a more comprehensive overview of the changes to the *Employment Standards Act*.

Mortgages

The Office of the Superintendent of Financial Institutions has implemented three new mortgage rules.

1. Uninsured mortgage consumers must now qualify using a new minimum qualifying rate, i.e. pass a stress test, even if the down payment is more than 20 per cent. The rate will be the greater of the five-year benchmark rate published by the Bank of Canada (currently 4.99 per cent) or the lender's contractual mortgage rate plus two percentage points.

In practical terms, home buyers may have to set their sights on a less expensive house.

Lenders do not have to apply the stress test to clients renewing an existing mortgage. However, if you are trying to secure a mortgage with a different lender you may be subject to the stress test.

2. Aside from credit unions and private lenders, mortgage lenders must establish and adhere to appropriate loan-to-value ratio limits. The LTV ration limit must reflect the risk and be updated as housing markets and the economic environment evolve. This change is aimed particularly at hot real estate markets such as Toronto and Vancouver.

3. Bundling mortgages between two lenders is no longer permitted. As with the stress test, a buyer may have to set his or her sights on a less expensive house since they may not be able to get the size of mortgage they could when the primary lender was allowed to find another lender to make up the shortfall.

This rule does not apply to credit unions or private lenders.

Smoking Ban

Under the *Smoke-Free Ontario Act*, hospital staff, patients and visitors will no longer be allowed to light up on hospital property or psychiatric facilities and there will no longer be designated smoking areas on these properties.

The Ticket Sales Act

If you have ever tried and failed to get tickets to a popular event you may have been foiled by a "scalper bot", a software program designed to buy large numbers of tickets online. The person running the software then resells them at an increased price.

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A Generous Gift

Victoria and Ian were involved in a three and a half year common law relationship. After dating for a few months, Ian moved in with Victoria.

A few months later, Ian's mother Dianne received a \$4 million inheritance. She decided to use some of the money to purchase a house for the couple. Ian owned 99 per cent, Dianne owned 1 per cent and Victoria did not have any ownership in the house.

In December 2012, Dianne suffered a series of strokes. Following four months of rehabilitation it was decided that she should come and live with Ian and Victoria. They began looking for a house that would better accommodate his mother's medical needs.

Victoria and Ian signed an agreement of purchase and sale for a new house, the Brookdale Property, worth \$2.6 million and they took possession of the house as joint tenants.

Victoria obtained a \$1 million mortgage in their joint names, which was later converted to a line of credit.

After obtaining independent legal advice, Dianne executed a gift letter wherein she gave \$1.7 million to Ian and Victoria.

Sadly, a month after they all moved into the Brookdale Property, Dianne died. Ian and Victoria ended up selling the house for \$2.325 million. Using his share of the proceeds, Ian repaid the parties' line of credit.

A few months after selling the house, the parties ended their relationship. The breakup led to a dispute about whether Victoria was entitled to 50 per cent of the proceeds of sale of the Brookdale Property. Ian argued that the parties intended throughout that he should beneficially own the entirety of the Brookdale Property, and that Victoria was named on title only for the purpose of obtaining short-term financing to acquire it.

The courts found that Victoria was indeed entitled to half the proceeds of sale on the basis that title was taken in the parties' joint names and that the agreement of purchase and sale was in both names.

In addition, the evidence supported that the \$1.7 million from Dianne was a gift to both Ian and Victoria. Dianne had obtained independent legal advice with respect to her gift and the gift letter and it was clearly explained to her that Victoria would be entitled to half the money. In other words, Dianne understood what she was doing.

However, while Victoria was entitled to half the proceeds of sale, Ian was entitled to credit for his repayment of her share

of the parties' joint debt under the line of credit. In a situation of a gratuitous transfer, it is the transferor's actual intention at the time of the transfer that is the key consideration. Based on the facts, there was no evidence that Ian had intended to gift that amount to Victoria when he paid off the line of credit. In fact, Victoria admitted as much during cross-examination.

This case provides a number of lessons for readers.

The first lesson is the importance of entering into a cohabitation agreement if you are choosing to live with someone in a common law relationship. Too many people continue to mistakenly believe that once you have lived with someone for X amount of time that you are treated the same as two people who have legally married.

The *Family Law Act*, which sets out the property rights and obligations of couples upon the breakdown of their relationship, deals almost exclusively with married couples, offering little protection to unmarried couples. However, one thing the Act does provide for is the ability of an unmarried couple to determine their own future with a cohabitation agreement.

The second lesson is to put any agreements or promises in writing, particularly when it involves very large sums of money. It is too easy to misunderstand what each party has agreed to, especially when there is a falling out between the parties.

The third lesson is the importance of obtaining independent legal advice when entering into any sort of legal agreement, particularly when the stakes are very high.

Our lawyers would be pleased to sit down with you to discuss how best to handle your legal agreements. 

NEW LAWS continued from page 2

New legislation has now come into effect which bans these scalper bots. In addition, individuals are prohibited from knowingly reselling tickets that were purchased by bots. Also resellers cannot sell tickets for more than 50 per cent above the face value of the ticket and must disclose the face value of the ticket.

Our firm has lawyers who work in a number of areas including employment law, corporate commercial, tax law, real estate and health law. If you require assistance in adapting to any of these legal changes please contact us. 

Bank Drafts and Cash - Sort of the Same Thing

In mid-December there was an interesting news story about a nearly one million dollars inheritance that had been lost by the courier contracted to deliver the money to the beneficiary.

Lorette, the executrix of her father's estate, needed to pay each of the beneficiaries their share of the estate. Her brother, Louis, lived more than 400 kms away, so at the bank's suggestion she had them issue a bank draft in the amount of \$846,648.46, the amount of Louis' share. She sent the bank draft to him via a courier. Unfortunately the courier lost the package and the bank, initially, refused to issue a new bank draft unless Lorette was prepared to take full financial responsibility should the draft turn up and be cashed. Following a lot of media attention, the bank did finally issue a new bank draft.

In theory, a bank draft is a secure means of payment, however, if it is lost or stolen it is basically the same as cash being lost or stolen. While the bank may be prepared to replace the draft, it will almost certainly require the purchaser to either sign a commitment to pay back the amount if the original draft is presented for payment and/or provide some kind of security, to ensure payment under the indemnity. Legally a bank must honour its commitment to pay on a bank draft, even if a replacement draft has been issued and cashed.

Bottom line, if you are trying to get a large sum of money to another person, you need to have a clear understanding of the method that will be used to transfer the money and what happens in the event the "money" does not make it to its destination. 

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What to do if you are being harassed

If you are being subjected to workplace harassment or violence, you need to tell someone. In fact, you should tell your supervisor, manager or designated person. If you are part of a union, you should also contact your union. In addition, to reporting the behaviour or comments, you should keep a written record that includes:

- when and where you were harassed;
- what was said or done;
- who said or did it; and
- the names of any witnesses.

Once you report the behaviour, your employer is required to act.

If the behaviour you have been subjected to amounts to a criminal offence such as assault, sexual assault or criminal harassment (stalking), you should also contact the police.

The Ministry of Labour has a fairly comprehensive guide entitled, "Understand the law on workplace violence and harassment", which you may wish to review.

If you are an employer who is unsure if you have proper policies in place to deal with workplace harassment and violence as well as occupational health and safety we encourage you to contact our firm. 

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