

RT Welcomes Jason Beeho



RT is pleased to announce that Jason Beeho has joined our growing firm as a partner.

Jason brings a real-world sensibility to legal and business issues and he is as comfortable with a

CEO as he is on a job-site. Jason's varied background includes more than 10 years of practicing employment and labour law at one of Canada's premier full-service firms, as well as previous work experience with construction and building trades.

A talented negotiator, Jason is also a staunch advocate when complicated workplace disputes arise.

Jason provides counsel to employers and employees on all areas of employment law, including employment contracts, wrongful dismissal, constructive dismissal, workplace policies, employment standards, and workplace human rights.

Upcoming Events

Chris Thomlinson will be discussing accommodation strategies for mentally ill employees at the *Workplace Mental Health Conference* on June 4.

Chris will also be discussing workplace investigations at *The Duty to Accommodate* conference on June 12.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered, and without seeking the advice of legal counsel. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

What happens when a workplace investigation is finished? Are the parties entitled to know the outcome and receive a copy of the report? A recent case from the Human Rights Tribunal of Ontario, *Pilon v. Cornwall (City)* 2011 HRTO 1695 (CanLII) sheds light on what an employer should do when the investigation comes to an end.

Reporting Findings of an Investigation to a Complainant – What is Required?

Ms Pilon was a long time employee of the City where she worked as a customer service representative in the Finance Department. Ms Pilon suffered from colitis, which required her to take frequent washroom breaks.

Ms Pilon had two conversations with her supervisor in which she was told that her use of the washroom outside of regular breaks was inappropriate. As a result, she wrote a letter of complaint to her employer in which she stated that she was angry and stressed that she had been asked to go to the washroom only during her breaks. She added that she had a medical condition and that her needs were not being respected. She reminded the City of its obligation to accommodate her due to her medical condition, and said that if there was a future problem, she would file a "harassment charge".

The City commenced an investigation pursuant to its Harassment in the Workplace Policy. It was conducted by the City's Labour Relations Co-ordinator and the Health and Safety Co-ordinator in Human Resources. Ms Pilon and witnesses were interviewed, and these interviews were captured on tape. At the end of the process, the investigators produced a report entitled "Informal Review on Allegations of Harassment in the Finance Department". In it, the investigators concluded that while there had not

been any violations of the Human Rights Code, Ms Pilon had been left with the impression that her washroom breaks were inappropriate. In addition, the investigators made seven specific recommendations dealing with the work situation.

The City reviewed the report, and being satisfied that there were no violations of the Human Rights Code, decided nothing would be done with it. That meant that none of the recommendations were implemented and Ms Pilon was not provided with a copy of the report or advised of the outcome of the investigation. Dissatisfied, Ms Pilon filed an application with the Tribunal arguing that she had been discriminated against on the basis of her disability.

At the Tribunal, Ms Pilon argued that the City had failed in its procedural obligations to her because she had not been told of the outcome of the investigation, nor had she received a copy of the Report. On its part, the City argued that it had conducted an informal investigation. As contrasted to a formal investigation which it said was also outlined in its process, there was no obligation to report back to Ms Pilon.

The Tribunal found in favour of Ms Pilon. Amongst other things, it concluded that there was not a distinction in the employer's policy between a formal and informal

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investigation, and that as far as Ms Pilon was concerned, a formal investigation had been conducted into her complaint. Most importantly, the Tribunal held that reporting back the results of the investigation was a procedurally essential element of this investigation. It said:

“...it may not always be necessary to provide a copy of the report prepared after an investigation and one can imagine situations where it would be entirely appropriate not to do so. However, in this case, where an employee has made a formal request for accommodation and

there has been an investigation leading to a report, it was appropriate and required under the Code’s duty to accommodate for the respondents to share the results of their investigation with the applicant. Instead of doing so, the respondents simply shelved the Report and did not share it in any way with the person who instigated the investigation. Given these facts, I find that (the respondents) failed...to appropriately investigate the applicant’s human rights concerns.”●

What does this case mean for those conducting investigations?

1. Critically assess the nature of your process at each step of the way and be prepared to modify it if circumstances warrant. If the employer has commenced an investigation or a review on an informal basis, but as it progresses, it is apparent that given the volume of the interviews, the subject matter of the allegations, or the nature of the employee’s complaint warrants it, it should consider using a more formal process.
2. In order to close off an investigation, the employer should communicate with the complainant and explain the outcome. This does not necessarily mean providing the complainant a copy of the report, although if the policy requires the employer to do so it should, but it does mean telling the complainant what has occurred and, in our opinion, the findings that have been made.
3. Decision makers are increasingly critical of the manner in which investigations are conducted. Therefore, employers should ensure that your workplace investigation process is pristine. In this case, there were a number of factors the adjudicator touched upon that suggested the City’s investigators was less than this standard. Tapes were made of the interviews, and these tapes were lost by the time of the hearing; the City purported to rely on a policy that did not clearly support what it was doing; and the investigators made recommendations that were not followed. Ultimately, the existence of these factors made it difficult for the City to defend the process it undertook.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca.

What’s New at RT

Janice Rubin spoke at the 27th Annual Conference for the Canadian Association for the Prevention of Discrimination and Harassment in Higher Education on May 2.

Janice co-chaired the Special Lectures 2012, presented by the Law Society of Upper Canada, on April 25 and 26. This year’s topic was "Employment Law and the New Workplace in the Social Media Age: An Interdisciplinary Legal, Human Resources & Technology Approach."

Chris Thomlinson discussed social media and the end of the employment relationship at the Special Lectures series on April 26.

Chris was a guest on CBC Superior Morning in Thunder Bay on April 3 where she discussed social media in the workplace.

Janice Rubin discussed just cause terminations on CBC Radio in Sudbury on March 7.

Last Chance to Register

It’s not too late to register for the June 12 -14 session of **Basic Workplace Investigation Techniques and the Report Writing Workshop**.

We offer a comprehensive workplace investigation techniques training curriculum to support professionals at all levels of skill and experience. We’ll prepare you to conduct your own investigations through hands-on, practical training designed to meet the challenges facing your institution’s investigators.

If you already understand the basics, join us for **Advanced Topics in Conducting Internal Workplace Investigations** taking place October 18.

Visit our [website](http://www.rubinthomlinson.com) or call (416) 847-1814 for more information.