

**A GUIDE TO
WORKPLACE HARASSMENT
INVESTIGATIONS**



STRATEGIC
MANAGEMENT

Contents

Introduction	2
When to engage in an external review	4
Principles for an investigation	5
Investigation process	7
About us	9
Résumé – Bonnie Durnford	10
Résumé – Rob Cunningham.....	11
Resources	12



STRATEGIC
MANAGEMENT

Introduction

Personal harassment includes any inappropriate conduct, comment, display, action or gesture by a person

Employees and employers share a responsibility to ensure that their workplaces are free of harassment. In Saskatchewan, employers are required to implement a written policy to prevent harassment in the workplace and to take action to stop harassment if it is occurring.

The legal framework for employers to prevent and respond to workplace harassment is based in common law, legislation, regulations, collective agreements (where applicable) and employer policy. Taken together, they typically form a comprehensive framework for employers and employees to respond to circumstances that may constitute workplace harassment.

The Occupational Health and Safety Act, 1993 and Regulations establish the legislative framework for understanding what constitutes harassment in the workplace. It also establishes the responsibilities of employers to ensure that reasonable steps are taken to prevent and stop harassment that arises out of, or is connected to, a worker's employment. Where the employer has knowledge of alleged harassment, the employer must take steps to respond and can be found liable for failing to take steps to investigate or otherwise respond.

Three categories of prohibited activity are described in the legislation. The first includes any inappropriate conduct, comment, display, action or gesture by a person that:

- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- constitutes a threat to the health or safety of the worker.

Secondly, the legislation includes protection against sexual harassment.



STRATEGIC
MANAGEMENT

When a complaint is made by an employee, the employer must ensure that the steps in their policy are followed and the complaint is responded to

The Act also protects workers against personal harassment that is not based on any of the prohibited grounds described above. Personal harassment includes any inappropriate conduct, comment, display, action or gesture by a person that:

- adversely affects a worker's psychological or physical well-being; and
- the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated.

Day-to-day management or supervisory actions do not fall within the definition of personal harassment. Examples of these activities include decisions regarding work assignments, job assessments and evaluations, workplace inspections, implementation of appropriate dress codes and disciplinary actions.

Every employer is required under the Act to ensure that, as is reasonably practicable, their employees are protected from harassment in their workplace and from any harassment that arises out of their employment. Employers are required to have a written harassment policy and must ensure their policies are implemented and are effective. In some cases, where the employer is federally regulated, the *Canada Labour Code* and the *Canadian Human Rights Code* apply.

When an employee makes a complaint, the employer must ensure that the steps in their policy are followed and the complaint is responded to. One option for the employer is to engage an external investigator to review the complaint and determine whether the complaint is grounded and whether the actions complained of constitute harassment.



STRATEGIC
MANAGEMENT

When to engage in an external review

The decision to engage in an external review should be guided by the employer's policy but can be informed by the following factors:

An external reviewer will provide an increased level of objectivity

1. A formal written complaint has been made against a named person, alleging harassment. Receiving a complaint in these circumstances requires the employer to take action to respond and thoroughly investigate the complaint, stop the harassment if founded and prevent the reoccurrence. If the employer's policy provides for informal or internal attempts to resolve the issue before a formal complaint and investigation occurs, these steps should be taken. The formal complaint and investigation may occur after, should the informal steps not resolve the issue.
2. An external reviewer will provide an increased level of objectivity. Circumstances that may warrant the additional step of bringing in an external reviewer include situations where the investigation may be subject to another process like a grievance, the employer has undertaken steps to resolve the matter internally and has been unsuccessful or where there has been a pattern of conduct that causes the employer concern.
3. The employer does not have the capacity to undertake an investigation to determine whether harassment has occurred.
4. Complexity of the complaint might also suggest that the situation warrants an external review. Complexity could involve multiple incidents in the complaint, incidents that occur over a long period, multiple complainants, multiple respondents, multiple witnesses, or a combination of these factors.
5. In cases of serious allegations like sexual harassment, the employer should always conduct an external investigation.



STRATEGIC
MANAGEMENT

Principles for an investigation

The principles of natural justice will guide any investigation:

1. Those alleged to have committed harassment are assumed innocent unless and until sufficient evidence indicates otherwise. The burden of proof is based on a balance of probabilities and rests on the individual making the complaint. In other words, the complainant has to prove on a balance of probabilities that the allegations occurred and that the actions complained of constitute harassment. Generally, the balance of probabilities means that the actions complained of are more likely to have occurred than not.
2. Full disclosure of the details of the complaint and the response is provided to the complainant and respondent. The respondent has a right to see the complaint against him or her. Both the complainant and respondent have a right to read and approve their own statements. Depending on the employer's policy, the respondent may, before being interviewed, read the statement given by the complainant. Likewise, the complainant may read the statement given by the respondent. During interviews either party may challenge the facts of the other's statement.
3. Witness statements (other than those of the complainant or respondent) may be disclosed to the complainant or respondent, depending on the circumstances of the complaint. The employer's policy usually guides the disclosure of witness information, including their identity.
4. Redirect interviews will be held as necessary with the complainant and respondent if further information is required based on witness statements. Where redirect interviews are held, the witness statements will be shared with the complainant and the respondent.
5. Both complainant and respondent are allowed to have representation throughout the process. Representation may be legal counsel, a union representative or another individual as directed by the employer's policy.

Both complainant and respondent are allowed to have representation throughout the process



STRATEGIC
MANAGEMENT

The primary role of the investigators is to uncover and corroborate facts in an objective manner

Subject to the employer's policy, D.C. Strategic Management (DCSM) will conduct any investigation in accordance with the following:

1. The initiation and conclusion of the investigation will be conducted in as timely a way as possible.
2. The investigation will be guided by the employer's harassment and investigation policy.
3. The investigation is confidential. DCSM will maintain the employer's confidentiality and the confidentiality of all information and evidence gathered during the investigation. DCSM will strongly advise all parties and witnesses to an investigation that they are expected to uphold full confidentiality and not discuss the facts of the case with others, in or out of the workplace.
4. The investigation will be thorough and objective. To the extent practical, investigators will speak to all witnesses necessary to resolve any differences in the events as alleged by the complainant or respondent.
5. The primary role of the investigators is to uncover and corroborate facts in an objective manner. In forming conclusions, the investigators will take into account credibility of all witnesses.
6. The final report is provided to the employer.



STRATEGIC
MANAGEMENT

Investigation process

Upon being engaged, D.C. Strategic Management Ltd. will generally undertake a harassment investigation including the following components. Each investigation is customized according to the employer's harassment policy.

1. Provide the employer with a mandate letter outlining the principles and process of the investigation.
2. Establish relevant criteria for the harassment investigation, including legislation, collective agreement and workplace harassment policies.
3. Outline to the employer reasonable timeline expectations for the conduct of interviews and conclusion of the written report, contingent upon the availability of witnesses and the complexity of the matter being investigated.
4. Confirm that proper authorities have been notified of the process, including unions where appropriate.
5. Establish locations and dates for interviews. All interviews will be conducted as soon as possible in locations that will not compromise the integrity of the investigation. Interviews will be held at locations away from the workplace.
6. A list of witnesses will be established and interviews arranged. Additional witness interviews will be added to the interview list as they are identified throughout the process.
7. Two investigators will be present at all interviews, one as the lead interviewer and one as a secondary interviewer and note-taker. Typically, interviews are not audio recorded. Detailed notes are taken on a computer throughout the interview and are provided to the interviewee for the purposes of verification. If changes are requested by the interviewee, those changes will be noted by the investigators in the statement.

Two investigators will be present at all interviews, one as the lead interviewer and one as a secondary interviewer and note-taker



STRATEGIC
MANAGEMENT

Evidence: a summary of the allegations and details of incidents from the perspective of the complainant, the respondent, and witnesses

8. At the start of the interview process, the investigator will state his or her mandate, including:
 - who the investigators are and how they came to be involved in the investigation process;
 - the nature of the investigation process;
 - a description of the relevant policies, legislation and collective agreement provisions;
 - a description of the balance of probability as the burden of proof;
 - general timelines; and
 - interview expectations, including co-operation, confidentiality and the fact that all comments are “on-the-record.”

9. Upon conclusion of the interviews, the investigators will write a report including the following elements:

Executive Summary: a summary of the complaint, the respondent statements, the evidence of witnesses and findings of the investigation.

Background: a description of the complainant and respondent (positions, time with employer) and the number of witnesses. Also includes reference to pertinent legislation, regulation, policy and collective agreement terms.

Evidence: a summary of the allegations and details of incidents from the perspective of the complainant, the respondent, and witnesses.

Analysis and Findings: the investigator’s assessment of what happened (i.e., findings of fact).

Determination: whether the incidents found to have occurred constitute harassment. This step may also be undertaken by the client.

Appendices: all statements will accompany the final report. Any relevant documents relied on for the investigators’ conclusions will accompany the report.



STRATEGIC
MANAGEMENT

About us

D.C. Strategic Management is a management consulting firm based in Regina, Saskatchewan, specializing in strategy development and implementation, organizational development, including workplace investigations, and strategic communications. Past clients include post-secondary institutions, the federal government, trade unions, health authorities, regulatory bodies and the not-for-profit sector. A team of two experienced investigators conducts workplace investigations: Bonnie Durnford and Rob Cunningham.



STRATEGIC
MANAGEMENT

Résumé – Bonnie Durnford

Partner, DCSM

306.585.0035

bdurnford@dcsm.ca

Bonnie is a highly experienced manager with over 21 years of experience in public sector organizations, seven years as a Deputy Minister and three years as an Assistant Deputy Minister. She has proven ability in workplace harassment investigation, and management of large organizations.

Education

2013 – Investigation Training, Law Society of Saskatchewan

2008 – Workplace Investigator Training, Hill Advisory Services

1982 – Member of the Saskatchewan Bar (currently non-practicing)

1981 – Bachelor of Laws (LL.B.), University of Saskatchewan

1978 – Bachelor of Arts, Great Distinction, University of Regina (Campion College)



STRATEGIC
MANAGEMENT

Résumé – Rob Cunningham

Partner, DCSM

306.526.6195

rcunningham@dcsm.ca

Rob is an accomplished executive with experience as a business owner and consultant since 2008 and over 13 years experience in the public sector, mostly recently as an Assistant Deputy Minister and as the Head of Government Communications. Areas of proven expertise include workplace harassment investigation, and management of large organizations.

Education

2013 – Investigation Training, Law Society of Saskatchewan

2008 – Workplace Investigator Training, Hill Advisory Services

1997 – Master of Arts (Sociology: History of Federal Aboriginal Policy), University of Saskatchewan

1997 – Introduction to Mediation, Saskatchewan Justice

1996 – Resolving Conflict Constructively, Saskatchewan Justice

1990 – Bachelor of Arts (Sociology), High Honours, University of Saskatchewan



STRATEGIC
MANAGEMENT

Resources

- Course materials: Hill Advisory Services – Workplace Investigator Training.
- Saskatchewan Advanced Education, Employment and Labour’s *WORKING WELL: Employers’ Guide to Preventing and Stopping Harassment in Saskatchewan Workplaces*.
- *The Occupational Health and Safety Act, 1993 and Regulations*, Saskatchewan.
- *Saskatchewan Human Rights Code*.



STRATEGIC
MANAGEMENT