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New Rights and Responsibilities Relating to Sexual Harassment and Violence in Ontario

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On International Women's Day, March 8, 2016, the Ontario government gave royal assent to Bill 132, *An Act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters* (the "Act"). The Act is one of the steps taken pursuant to the Ontario government's 2015 Action Plan to Combat Sexual Violence and Harassment. The Act is quite short, and it operates by enacting 6 schedules, each addressing different legislation relating to sexual violence. In brief, the Act provides for the following enactments to address the issue of sexual violence and harassment in different contexts:

- removes limitation periods for proceedings based on sexual violence in *Compensation for Victims of Crime Act* and *Limitations Act, 2002*;
- requires colleges and universities to have sexual violence policies setting out process for sexual violence reported by revising the *Ministry of Training, Colleges and Universities Act*, as well as the *Private Career Colleges Act, 2005*;
- amends *Occupational Health and Safety Act* (the "OHSA") to include a definition of workplace sexual harassment, and to include workplace sexual harassment in the definition of workplace harassment, while imposing certain duties on employers to protect workers from workplace harassment; and
- Amends *Residential Tenancies Act, 2006* to allow early termination of a tenancy by a tenant, if circumstances related to sexual violence are established.

Amendments to the OHSA

The section of the Act that will affect Peel Regional Police is Schedule 4, which enacts numerous amendments to the OHSA that will apply to all employers. In brief, the amendments to the OHSA address the following:

- the definition of workplace harassment is changed to include "workplace sexual harassment";
- a definition of "workplace sexual harassment" is added;
- a subsection is added to section 1 of the OHSA providing that reasonable management and direction of workers does not amount to workplace harassment;

Act requires a policy with respect to alleged harassment

- requires an employer to have a written program to address the issue of workplace harassment;



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- requires the program to include a measure to allow a worker to report workplace harassment to someone other than the employer or supervisor, if it is alleged that the employer or supervisor is the harasser;
- requires the program to set out how complaints of workplace harassment will be investigated and dealt with;
- requires the program to set out how information will be kept confidential, unless necessary for investigation or taking corrective action related to a complaint;
- requires the program to indicate how the complainant and the alleged harasser will be informed of the results and any corrective action;

Act sets out duties to protect against harassment

- employer must ensure that an appropriate investigation is conducted into complaints of workplace harassment;
- employer must ensure that the complainant and the harasser are informed in writing of the results and any corrective actions;
- employer must ensure that the program required for responding to workplace harassment is reviewed as often as necessary, and at least once a year;

Information and instruction

- employer must provide a worker with information and instructions with respect to the policy and program; and,

Outside investigation

- the Act allows an inspector to cause an investigation to be conducted by an impartial person at the expense of the employer.

Definition of “workplace harassment” and “workplace sexual harassment”

The definition for “workplace harassment” in the Act is as follows:

“workplace harassment” means,

(a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or

(b) workplace sexual harassment; (“harcèlement au travail”)

The Act also provides a definition of “workplace sexual harassment”, as follows:

“workplace sexual harassment” means,

(a) 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

(b) making a sexual solicitation or advance where the person making the solicitation or advance 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 that the solicitation or advance is unwelcome; (“harcèlement sexuel au travail”)

Although the Act is relatively short, it can be seen that it has a wide range of effects on the law of Ontario. First, certain limitation periods are removed for victims of sexual assaults. Second, colleges and universities are required to have quite detailed programs in place to deal with sexual violence and harassment. The third effects is probably the broadest, as it affects all employers in Ontario, requiring proper policies for dealing with sexual violence and harassment. Finally, the Act provides the ability to terminate residential tenancies in certain circumstances involving sexual violence and harassment.

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