

Workplace Investigations Related to Sexual Harassment Claims
Presented by Clea Parfitt, lawyer

SHARP | Sexual Harassment Advice,
WORKPLACES | Response, and Prevention for
Workplaces

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3 Categories of Response

- Responses to maintain order and respond to wrong-doing
- Responses to adjudicate the complainant's complaint and provide a remedy to the complainant
- Responses related to ensuring that health and safety risks are found and eliminated or minimized

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Robichaud v. Canada (Treasury Board), (SCC)

An employer is responsible for discrimination in the workplace because, since it has effective control of the workplace, it must be liable for human rights violations for human rights legislation to be effective at ameliorating discriminatory conditions

1987 CanLII 73 (SCC), [1987] 2 SCR 84

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3 Main Sources of Legal Obligation to Investigate Image 3

- Policies which may be enforceable as contractual obligations
- Obligations arising from the prohibition against discrimination in human rights codes which require an effective response to discrimination, including sexual harassment
- In respect of employers but not service providers - Health and safety legislation – here the Workers' Compensation Act, RSBC 2019, c. 1, and the Occupational Health and Safety Regulation, B.C. Reg 296/97

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Obligation to Respond Effectively **Human Rights Decisions**

- *The Sales Associate v. Aurora Biomed Inc and Dong Liang and Sophia Liang*, 2021
- *Laskowska v. Marineland of Canada Inc.*, 2005 HRTO 30
- *Beharrell v. EVL Nursery*, 2018 BCHRT 62
- *Cunanan v. Willingdon Church and others*, 2018 BCHRT 66
- *Young v. Home Depot and others*, 2018 BCHRT 68
- *Kirchmeier and others v. University of British Columbia (No. 2)*, 2017 BCHRT 386
- *University of British Columbia Okanagan v. Hale*, 2021 BCSC 729
- Older BC Tribunal cases:
 - *Guzman v. Dr. and Mrs. T*, 1997 BCHRT 1
 - *Poonja-Jiwany v. Bernard Haldane Associates*, 2002 BCHRT 24

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Workers Compensation Requirements Image 4

Workers Compensation Act, RSBC 2019, c. 1

- s. 21 – responsibilities of employers
- s. 22 – responsibilities of workers

Prevention Manual – Policy P2-21-2 (at page 57)

Division 10 - investigation and reporting, including s. 69, 70, 71, and 72

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Advocacy in Investigations:

1. Ensure complaint is complete and accurate
2. Identify remedies or objectives for the complaint and investigation
3. Review, evaluate and clarify procedures established by policy, and advocate for improvements in process - Is the investigation a suitable, safe process?
4. Identify interim measures for during investigation
5. Identify disclosure issues

Image 5

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Advocacy in Investigations:

6. Review response with complainant - difficult
7. Support complainant during investigation interview; attend interview.
8. Review report (drafts or final) with complainant and responses, if permitted
9. Identify and advocate for appropriate outcomes for respondent and complainant after investigation is complete

Image 6

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Questions or Comments?

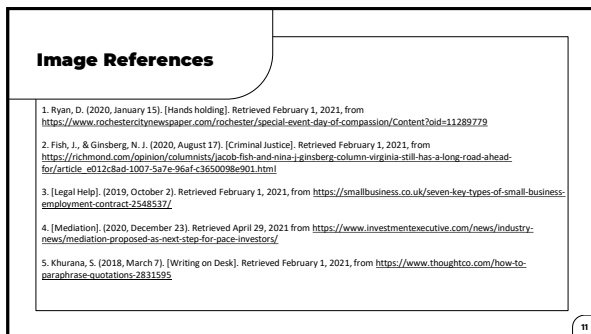
Image 7

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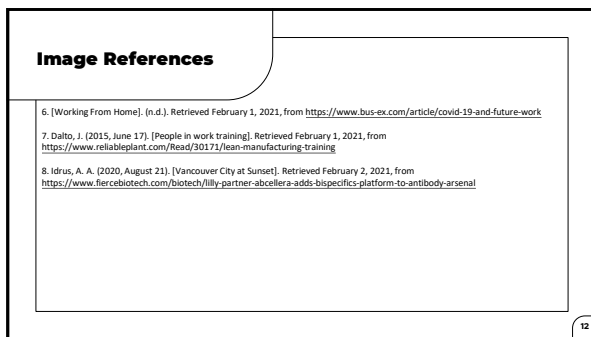
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