Case In Point

An “Uncomfortable” Workplace Interaction – or Harassment and Discrimination under the Human Rights Code?

Date: June 19, 2017

In dismissing this human rights application as having no reasonable prospect of success, Vice Chair Hart made helpful comments with respect to the *Human Rights Code* (Code) and the role of the Human Rights Tribunal of Ontario (Tribunal) in dealing with “uncomfortable” workplace interactions. In short, the decision stands for the proposition that, depending on the context, conversations with or inquiries by co-workers which involve subject matters that fall within a prohibited ground or which make an employee feel uncomfortable will not necessarily be elevated to harassment or discrimination within the meaning of the Code.

The applicant in this case was a Registered Practical Nurse (RPN) who had various issues with respect to her practice, for which she had been counselled on many occasions. The applicant raised various allegations she claimed were related to her creed, sex and age. Some of these comments included interactions in the workplace that were clearly related to her poor performance as well as other innocuous interactions with co-workers (a co-worker asking her “what was new in her life,” for example). Other interactions which the applicant more clearly related to her age, creed and sex included:

- inquiries relating to her personal and romantic life
- comments and inquiries about her Christian faith and sexual activity
- a co-worker asking if the applicant had ever been to a gynecology appointment and asking how old the applicant was when the applicant asked what a speculum was during a procedure the two were performing.

Vice Chair Hart dismissed the application as having no reasonable prospect of success following a preliminary hearing. In doing so, he made the following helpful comments with respect to the workplace interactions the applicant experienced (as outlined above, in order):

[11] While I certainly appreciate that [asking about the Applicant’s romantic life with her boyfriend] was a very personal question and on its face relates to sex, it is my view that the mere asking of a question of this nature in the workplace by a female co-worker in the circumstances described cannot properly be elevated to ground an allegation of discrimination or harassment because of sex and/or creed in violation of the Code. It is not the proper role or function of the Code or this Tribunal to intervene in every uncomfortable interaction in the workplace.

[19] … Once again, while these are very personal questions about the applicant’s sex life and religious beliefs, it is again my view that questions of this nature in this specific context cannot be elevated to the level of discrimination or harassment because of sex and/or creed in violation of the Code.

[21] … In my view, in this specific context, it would not be discriminatory for this RPN to have asked the applicant about her age. It is surprising that a young woman of the applicant’s age, and especially a trained RPN, would not know what a speculum was. While the applicant’s evidence clearly is that there was a question in the workplace about her age, I find that she has no reasonable prospect of success in being able to establish at a hearing that a rather innocuous question of this nature in this specific context resulted in the kind of adverse or negative impact on her that is required to prove discrimination or harassment.

As this case illustrates, not every workplace interaction that references a protected ground will amount to discrimination or harassment under the Code. However, prudent employers should consider allegations raised by individuals on a case-by-case basis, investigate appropriately and avoid automatically dismissing any such complaints from employees as

“watercooler talk.”

The employer was successfully represented by D. Brent Labord.

Vlad v. Grand River Hospital Corporation, 2017 HRTO 634