

Case In Point

Ontario Court of Appeal Confirms Harassment by Town Resident Outside Scope of Workplace Harassment Policy

Date: July 25, 2017

In a recent decision, [Rainy River \(Town\) v. Olsen](#), the Ontario Court of Appeal upheld the decision of an application judge which refused to grant a declaration that a resident of the Town of Rainy River had violated the Town's workplace harassment policy when he harassed and defamed the mayor, council members and staff. The Court agreed with the finding of the application judge that the harassment occurred outside the workplace and, since the respondent was neither a worker nor co-worker as defined by the *Occupational Health and Safety Act*, the workplace harassment policy did not apply to him.

In this case, the mayor was employed full-time at another job, which was not sponsored by or associated with the Town. The resident attended at her workplace at the other job and verbally harassed her regarding town business. He also sent critical, sarcastic and insulting emails to the mayor, council and one of the Town employees.

The wording of the Town's workplace harassment policy indicated that for "workplace harassment" to include incidents that happen away from the workplace, such incidents must involve two employees of the Town *and* must poison the workplace. Given the specific facts of this case and the wording of the policy, the application judge, and later the Court of Appeal, found that the workplace harassment policy was not triggered here because the resident was "not part of the workplace."

Many employers with public-facing operations have workplace harassment policies which capture the acts of members of the public which occur within the workplace, in order to protect their employees from workplace harassment. This decision is an important reminder that the wording of a workplace harassment policy is important, as it may limit the recourse available to an employer. Employers should review the language within their policies to ensure that they include all conduct that needs to be captured, including acts of harassment by the public against its employees.