



Bill 32: Sexual Violence and Harassment Action Plan Act An Ounce of Prevention is Worth a Pound of Cure

DAMIEN M. E. BUNTSMA

Bill 132, Sexual Violence and Harassment Action Plan Act, became law in Ontario on September 8, 2016. The Act expands the definition of workplace harassment to include sexual violence and sexual harassment and adds the definition of workplace sexual harassment to the *Occupational Health and Safety Act* (OHSA). This is a major development: employers are now obliged to ensure that workers are protected from incidents of workplace harassment and sexual harassment. Employers, no matter how small, must develop and implement workplace policies and procedures specifying how they will prevent and address sexual violence and sexual harassment.

Bill 132 defines sexual harassment as behaviour that is distressing, including unwelcome comments or conduct against a worker due to their gender, sexual orientation, gender identity or expression.

Bill 132 defines sexual harassment as behaviour that is distressing, including unwelcome comments or conduct against a worker due to their gender, sexual orientation, gender identity or expression. It also applies to any type of sexual advances by a person in an authoritative role and who knows or ought to know that such advances are unwelcome.

The legislation also requires employers to investigate any complaints of sexual harassment, investing resources to provide the necessary information and investigate complaints in a full and appropriate manner. Specifically, the OHSA requires employers to have written policies and procedures to:

- identify who will investigate, including who will conduct investigations if the alleged harasser is the supervisor or employer.
- identify how privacy and confidentiality will be maintained.
- deliver written results of the investigation to the complainant and alleged harasser.
- review their sexual harassment complaints program annually.

Many of these requirements may be costly to implement, especially for smaller employers. For example, where the



alleged harasser is the supervisor or employer, a small business will have to retain a third party as an alternate means of receiving complaints.

Also, the Ministry of Labour now has the power to order that an employer engage a third party to conduct an investigation of a workplace harassment complaint and provide a written report, at the employer's expense. While not clearly set out, the Ministry of Labour may make such an order if they receive a complaint that an investigation was not conducted, or if they conclude, after receiving a complaint, that a completed investigation was not appropriate in the circumstances.

The Last Word

With the Ministry of Labour's increased powers under Bill 132, failure to take proactive steps immediately may have costly consequences in the future. We recommend that all employers, especially small employers, seek legal assistance in updating and revising their internal policies from experienced counsel specializing in employment and labour law.

Lawrences' Employment & Labour Law Group has considerable experience assisting employers in drafting appropriate policies and handling legal liability situations.



Damien Buntsma leads Lawrence's Employment & Labour Law Group. He represents and advises public and private sector employers, unionized and non-unionized, in all areas of labour and employment law. Damien can be reached at (905) 452-6876 or dbuntsma@lawrences.com

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Registering a Business Name: What's in a Name? Protection

LOUIS VOULOUKOS

Albert Jose owns a truck and transports goods for a living. When his two sons join the business, they suggest that the business be incorporated, to protect them against personal liability. Mr. Jose registers a numbered corporation, 1234567 Ontario Inc. ("123"). 123 buys its fuel from ABC Fuel Inc. ("ABC"). There is no written contract between 123 and ABC, but 123 is identified on ABC's credit application as "Jose's Transport Company", the name that appears on 123's trucks. 123 pays ABC for its fuel purchases by cheques drawn from "Jose's Transport Company". The numbered corporation is not identified at 123's facility or on its trucks. "Jose's Transport Company" is not registered as a business name.

On Mr. Jose's death, 123 owes ABC over \$130,000. To recover the outstanding account, ABC sues 123 and Mr. Jose's personal estate. His sons argue that the corporation, 123, should be liable, but not their father's estate. The court disagrees with them. Mr. Jose's sons are aghast: isn't this what incorporating was supposed to protect them from?

Had Mr. Jose received proper legal advice when he incorporated, he would have registered "Jose's Transport Company" as 123's business name and would have ensured that both names appeared on his business documents and cheques. Then his business creditors would have been unable to sue his personal estate. A further protection would have been a written business contract between 123 and ABC.

If you are identifying yourself to the public by other than your corporate name and wish to avoid personal liability, register a business name (such registrations must be renewed every five years).

A corporation is legally required to ensure that the parties with which it deals are aware of the capacity in which it is carrying on business. *The Business Corporations Act* (Ontario) requires a corporation to set out its corporate name legibly on all contracts, invoices, negotiable instruments (such as cheques) and orders issued by or on behalf of the corporation. Also, the words "Limited", "Incorporated", or "Corporation" or the corresponding abbreviations "Ltd.", "Inc." or "Corp." must be part of every corporation's name.

Further, the *Business Names Act* (Ontario), requires that no corporation shall carry on a business or identify itself to the public under a name other than its corporate name—unless the name is registered by that corporation. Also, a corporation identifying



itself to the public under a registered name must set out both the registered name and the corporation's name on all contracts, invoices, negotiable instruments, and orders issued by or on behalf of the corporation.

"Jose's Transport Company" complied with none of the above provisions.

Shouldn't ABC have known it was dealing with a corporation rather than an individual? After all, Mr. Jose identified the business as "Jose's Transport Company". Also, doesn't the word "Company" signify that "Jose's Transport Company" is carrying on business as a corporation? The above example is based on a real case where the court found that using the word "Company" was not adequate notice, nor did its use obligate ABC to investigate further. Rather, the onus was on the corporation (123) to prove that the party with whom it was contracting (ABC) was aware that it was dealing with a corporation.

If you are identifying yourself to the public by other than your corporate name and wish to avoid personal liability, register a business name (such registrations must be renewed every five years). Lawrence's Business Law Group has extensive experience in setting up companies and can help you avoid future legal problems.



Louis Vouloukos is an associate in Lawrence's Business Law Group. In addition to corporate and commercial work for the firm's business clients, he also practises franchise law, providing all necessary legal services to franchisors and franchisees. Louis can be reached at (905) 452-6883 or lvouloukos@lawrences.com

Should You Sell Your Home Privately?

MAJA MITROVIC

In the current real estate market, with low supply and high demand, Ontario homes in and around the Greater Toronto Area are selling quickly and often for well over the asking price. This causes sellers to question whether they need a real estate agent: if houses are seemingly “selling themselves” at very high prices, sellers may be reluctant to pay correspondingly high commissions.

To know whether you want to undertake the selling process yourself, you need to know what is involved—and what can go wrong. A house sale typically goes through four stages: pricing, marketing, negotiating, and closing. Many sellers think a lawyer is involved only at the closing; the fact is that the sooner you involve a real estate lawyer, the sooner that lawyer can start protecting your interests. If you do decide to use a real estate agent, have your lawyer review the listing agreement that you sign with the agent, to ensure that you understand exactly what you’re committing to and how your property is described.

Pricing

One of the most important points in selling your home privately is setting a realistic asking price. You can check the purchase price of comparable properties in your area to get a better idea of how similar properties are priced. However, your neighbour’s record sale price may not accurately indicate the market value for your home. Without a realtor, the best way to price your property realistically is to obtain a real estate appraisal from an independent licenced real estate appraiser.

As the seller, whether you have an agent or not, you should have a real estate lawyer review the Agreement to ensure that it is properly worded to avoid legal problems later on.

Marketing

Finding a buyer once you have determined your asking price will involve advertising your property online, in local newspapers, posting signs around your home, and by word-of-mouth through your network. For a fee, private sale companies can list your property on the Multiple Listing Service (“MLS”) website used by real estate agents, sellers and buyers. It will also involve making arrangements to show your home to interested parties.

Negotiating

If an interested buyer has a real estate agent, that agent will typically prepare an Agreement of Purchase and Sale (the “Agreement”) and present it to the seller. If the buyer does not have an agent, you as the seller should retain a real estate lawyer to prepare an Agreement based on the terms you have discussed with the buyer. Key terms to include in an Agreement include, but are not limited to, the parties, the



purchase price, the deposit, chattels included, conditions of closing and the closing date.

As the seller, whether you have an agent or not, you should have a real estate lawyer review the Agreement to ensure that it is properly worded to avoid legal problems later on. In a private sale, the lawyer will also negotiate and draft any changes on your behalf and advise and assist you with the sale process.

Closing

The buyer and the seller each need their own lawyers to close the transaction. If the seller does not have an agent, the seller’s real estate lawyer holds the deposit in trust. As part of closing the transaction, the seller’s real estate lawyer prepares closing documents, and ensures that the transaction is completed before the end of the business day. Lawyers’ fees to close transactions are separate from their fees to prepare or review Agreements.

Whether or not you use an agent, involving a real estate lawyer from the outset will help prevent problems in selling your home. Lawrences’ Real Estate Group has extensive experience in drafting and reviewing agreements of purchase and sale and in closing transactions.



Maja Mitrovic is an associate with Lawrences’ Real Estate Group. She can be reached at (905) 452-6892 or mmitrovic@lawrences.com.

Life at Lawrences

Lawrences' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

A Banner Year!



As Lawrences partner **Ed Upenieks** ends his term as president of the 16,000-member Ontario Bar Association, he can look back on a banner year that took him all across the province meeting everyone from new lawyers in small towns to judges of the Supreme Court of Canada.

For Ed, his personal highlight achievement of the year was raising member engagement in the OBA and in members' communities. As president, he attended Call to the Bar ceremonies that convey on newly qualified lawyers the right to practice law in Ontario: "I especially enjoyed meeting young lawyers and future lawyers." He says the experience that had the biggest impact on him was having dinner with all the Supreme Court of Canada judges: "They are the brightest legal minds in the country, responsible for shaping Canada's laws, but I was struck by their kindness, compassion, and their genuine interest in the legal issues we face on a daily basis in Peel."

His role as president took him all over Ontario and he notes that "although there are significant regional differences across the province, there are also many commonalities, like the commitment of our members to both local and national issues." Often when attending special events, he would take along younger lawyers



from Lawrences to help them gain wider experience in the legal community. Lawrences litigation lawyer **Sahar Cadili** remembers meeting highly respected members of the profession at some of these events: "I was able to watch Ed connect with numerous judges and some of the country's most prominent lawyers. It impressed me that he was always courteous but always spoke with strong conviction. It was a great example, because in the courtroom or across the negotiation table, you must connect with people in different ways to get your message across."



Lawrences wills and estates lawyer **Kiran Gill** comments: "Ed has encouraged us and given us opportunities to present at legal education seminars, which has been a great learning experience. Ed has also introduced us to Supreme Court of Canada judges

and prominent members of the Bar. Involvement in professional organizations such as the OBA early on our careers is highly beneficial for our development as lawyers."

Ed was particularly interested in helping OBA members communicate to the public the importance of having a will (he is ranked in the Canadian Legal Lexpert Directory as repeatedly recommended for Estate Litigation and is very familiar with the consequences of not having a will).

As Ed sought to increase members' involvement with the OBA, he was involved with many new initiatives, including the use of technology to hold the OBA's flagship professional development program simultaneously in both Ottawa and Toronto. All 33 programs were webcast so that lawyers anywhere in Canada could participate. As president, Ed commented: "We knew that a greater use of technology was the key to ensuring OBA Institute would remain accessible, convenient, useful and relevant to lawyers throughout Ontario." The international Association for Continuing Legal Education recognized the OBA with an Award of Outstanding Achievement in the "Technology" category for this program.

Ed has noticed that since he became president of the OBA, he is receiving more files from beyond the GTA, and more requests to act as a private mediator or arbitrator. Brampton has also received greater attention in the provincial and national legal community as the legal media covered Ed's presidential activities. Now that his presidential term is over, Ed intends to continue mentoring young lawyers and hopes at some point "to be able to take a real vacation!"



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Lawrence, Lawrence, Stevenson LLP
43 Queen Street West
Brampton, ON L6Y 1L9

T: (905) 451-3040
F: (905) 451-5058
E: info@lawrences.com
www.lawrences.com