

BE CAREFUL WHAT YOU SAY AND DO! SOME LEGAL PITFALLS TO AVOID

By **Victoria Girling**, Vice-president
STERLON Underwriting Managers Ltd.

WORKPLACE HARASSMENT

Last year there was an alarming increase in the number of workplace harassment complaints brought against administrators. Any member who faced such a complaint can attest to the tremendous stress and emotional rollercoaster he/she experienced. These are complaints raised by staff members, who appear to be using this forum to undermine the administrator's function, since the matters invariably appear to relate to a management style.

Boards seem to be finding it difficult to differentiate between *harassment* issues and *management style* issues. Some boards have a workplace harassment policy while others have no policy at all. Our experience has shown that neither situation is ideal. The policies are often convoluted and call for an independent investigator, which has led to lengthy investigations that have mushroomed from a single allegation to 16 pages or more of allegations, after all staff have been interviewed and allowed to raise matters that often go back many years. If there is no policy the member has no understanding of how the investigation will be run. It is hard to feel any comfort in such a situation. Some boards will provide specific and detailed allegations in writing, while others offer generic and non-specific allegations. In almost all cases the member is advised that the result of the investigation could lead to disciplinary measures up to and including dismissal. Anyone who is told this is likely to feel very insecure and vulnerable.

Of great concern to CPCO is the reluctance of some boards to make a decision at an early stage that the allegations do not fall within the definition of *harassment*, but rather are a series of complaints more akin to *personality* issues. The latter may need to be investigated as part of a performance appraisal process, but it should not be open season for staff to malign their administrator under the guise of harassment.

Another concern for CPCO occurs when a board keeps the administrator at home on full pay during the investigation process. In our view this seriously undermines the member's position and professional standing.

Unless STERLON is concerned that a matter has serious employment or disciplinary implications, a lawyer is not appointed to deal directly with the board, but legal advice is provided to the member who is then able to represent himself or herself based on such advice. This ensures that the issues do not escalate into something too formal. However, it has been necessary this past year for legal counsel to represent many of the members during some workplace harassment investigations, since there has been a greater emphasis by boards to conduct comprehensive investigations and lawyers have been appointed by some boards as the investigators.

COULD THIS BE YOU?

Here are just a few examples of some of the actions that staff cite to support a workplace harassment complaint. The school administrator:

- used a nasty tone;
- had a mean face;
- glared in a really mean manner;
- used a derogatory tone;
- belittled me by his comments;
- gave a dirty look;
- was negative, controlling and demeaning;
- yelled at me;
- verbally assaulted me;
- turned down her mouth and gave a condescending glare;
- berated me with his tone;
- demanded in a condescending tone of voice;
- spoke loudly and rudely;
- did not respond;
- constantly used verbal abuse; and
- followed and watched me.

FACTS

- Last year only four per cent of STERLON's files related to workplace harassment complaints against members. This year that number has increased to 24% of all files.
- One case is entering its 16th month from the time the complaint was filed and is still unresolved.
- One case took eight months for the investigation to be completed during which time the member was removed from the school.
- One case raised issues dating back three years.
- In many of the cases an allegation of harassment by one person quickly developed into multiple allegations, which were elicited during the investigation process of other staff members.
- Boards do not provide legal support for school administrators in these situations.
- The number of grievances were reduced this year.

STERLON is the plan administrator of the CPCO Legal Benefits Plan and collects data and tracks new trends. This year a significant trend has emerged demonstrating a shift from disgruntled parents to disgruntled staff members and the problems emerge in the following forums.



COLLEGE COMPLAINTS

The Ontario College of Teachers (OCT) has been struggling to investigate complaints within the recommended time frame (120 days) and this has led to some administrators having a long wait before finding that the complaint has been dismissed. Some administrators waited over 750 days for a decision, while others were well in excess of the 120 days. Last year there was an increase in the number of staff-issued complaints versus parent-issued complaints. Some of the issues

dated back several years and many were trivial and again related to *personality* issues rather than professional misconduct. Nonetheless, the member faced a period of uncertainty and increased stress as they had to re-live events, many of which were not recent.

STERLON provides legal assistance in the preparation of the responses to College complaints which helps to take some of the stress out of the situation.

FACTS

- Even where the complaint is found to be *frivolous* the College does not penalize the complainant at the investigation stage.
- Very few boards provide legal support to the members for College matters.
- Fifty per cent of complaints this year were filed by staff members compared with 13% last year.

CASE HISTORY

A parent filed a complaint with the College of Teachers alleging that the school administrator had behaved in a discriminatory and demeaning manner towards a student with respect to the wearing of a bandana and studded bracelet, both of which were prohibited by the school's dress code policy. The complaint was filed in January 2008 referring to incidents that occurred in October 2007 and contained over 30 pages of supporting documentation. This documentation was sent to the member by the College in May 2008. A four-page response was filed, with assistance under the CPCO Legal Benefits Plan, by early June. The decision of the College was made the following year on April 23, 2009. The member was notified of the decision in early May. The complaint was dismissed and the College stated that the "allegations are frivolous, vexatious and an abuse of process." A good result for the member, but the matter had been hanging over that member for an entire year, from the time of notification to eventual conclusion. Under the College process there are no ramifications for the parent who initiated this process.

CONCLUSION

As you return to work this year do not hesitate to contact the 1-888-STERLON Telephone Legal Advisory Service if you feel that staff issues are taking a turn for the worse. Being pro-active in this area may just prevent the issue of workplace harassment proceedings and/or a College complaint. Sadly, it is becoming necessary to ensure that you have a witness with you when dealing with difficult staff, so that any allegations relating to your conduct can be refuted by an independent third party.

It is hoped that following the increase in the above types of investigation and STERLON's intervention with a number of

boards that there will be a concerted effort by all to consider the merits of any complaint. Weighing the need to balance the rights of individuals to a happy and healthy work environment and the cost of education dollars spent by boards during an investigation process, where the issues are not genuine ones of harassment is crucial.

This article was prepared by STERLON Underwriting Managers Ltd., the administrators of CPCO's Legal Benefits Plan, as a service to CPCO members.

DEFAMATION ON A GLOBAL SCALE FACEBOOK POSTINGS



STERLON has received more and more calls from administrators who have discovered *Facebook* entries created by students and/or other parties, which contain derogatory, defamatory and often dangerous comments about themselves. In this age of global technology, such comments can be seen by anyone in the world with internet access. The following example is a matter STERLON dealt with recently.

Extremely inflammatory comments about a principal were posted by a student on *Facebook*. STERLON sent a letter by courier to the parents of the student demanding that their child cease and desist from any further defamatory behaviour and that the entry be removed immediately. A letter of apology was also requested. STERLON also advised *Facebook* that the author did not meet the age criteria of 13 years and older. Within 24 hours *Facebook* agreed that the posting was offensive and removed it. They also cancelled the student's account. Furthermore, the letter prompted a call immediately from the parent who was keen to meet and apologize to the principal, having been unaware of the actions of the child.

You might not think that a *Facebook* post is a serious issue, however, consider this; a student accuses you of molesting other students and suggests other acts of a sexual nature involving students. Viewed in isolation these posts could be regarded as the rants of an immature student, but any viewer could report the matter to the Children's Aid Society (CAS) or the police who have a legal obligation to investigate such allegations. These comments could also trigger an investigation by the OCT.

If you find yourself the subject of unwelcomed statements on *Facebook*, which are in the public domain, i.e. a public group account, which is open to anyone to view and/or join, you should immediately contact STERLON at 1-888-STERLON (783-7577).

**DO NOT IGNORE MALICIOUS POSTINGS.
THEY ARE HIGHLY DANGEROUS TO YOUR
PROFESSIONAL REPUTATION.**

NEED ADVICE?

CALL 1-888-STERLON

Remember that this Telephone Legal Advisory Service is available during business hours for you to speak directly to a lawyer about any matter concerning you at work or any matter of a personal legal nature. Calls are unlimited in number and duration. Your call is confidential.

Early consultation with a lawyer can often prevent an issue becoming more serious and reaching a stage where a complaint has been filed against you requiring a full legal defence. Be proactive and get advice early.

If the lawyer feels that the issue is serious, STERLON may need to open a claim file and allocate a lawyer to represent your interests. A loss adjuster will usually visit you to obtain all the details. This service is confidential.

If it is determined that the matter has no legal consequences but additional assistance may be useful, your call may be transferred to a member of the CPCO member support team. These are current or retired principals with years of experience in school administration, who are able to provide some guidance and mentoring.

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sales@barklake.com
www.barklake.com
1-888-517-9999
Fax (705) 447-2475