

## ***Failed Human Rights Investigations... A Cautionary Tale***

A failed investigation into a human rights complaint might cost employers much more than one might think, as applicants are receiving damages awards for failed investigations, apart from any damages awarded for discrimination. A 2014 Ontario Human Rights Tribunal decision awarded a former employee \$35,000 for intangible losses caused, in part, by a failed investigation by the employer.

In *Sears v. Honda of Canada Manufacturing* the applicant was known to have vision problems. During the course of his employment, the applicant made two complaints of discrimination. The Company elected to only investigate one of his two complaints, and the investigation simply involved the human resources coordinator interviewing a few employees.

The Tribunal found the Company failed to conduct reasonable and adequate investigations into the applicant's complaints. As such, the Tribunal awarded the applicant \$35,000 for intangible losses.

So what should you do if you receive a human rights complaint?

Upon receipt of a human rights complaint, employers should do the following:

1. Take all complaints seriously
2. Identify and schedule witnesses to interview
3. Organize a list of questions for all witnesses to answer
4. Follow-up on any comments from the interview that might be relevant to the complaint
5. Identify any documents that might relate to the complaint and secure a copy

Upon completion of the interviews, employers should do the following:

1. Review all evidence and assess credibility
2. Determine if the complaint is substantiated, unsubstantiated, or if the investigation is inconclusive
3. Prepare an investigation report for the employer's files
4. Take action based on the outcome
5. Inform the parties of the results

If the investigator has done his or her job properly, the Company should have a solid basis for defending itself against claims of inaction or unfair treatment.

Our October e-Learning with e2r Solutions® will more thoroughly canvass workplace investigations in the context of human rights complaints and other areas of concern. Be sure to tune in for more helpful tips and information on how to correctly conduct an investigation.

In the meantime, please contact e2r Solutions® if you find that your organization needs any assistance with any upcoming workplace investigations.

[e2rsolutions.com](http://e2rsolutions.com)

70 The Esplanade, Suite 401, Toronto, Ontario M5E 1R2

📞 416-867-3093 📠 416-867-1434 📞 1-866-327-7657

