



RISK 101

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A Risk Management Newsletter For The University, College & Institute Protection Program's Members

Team Leader's Message

Welcome to our latest edition of Risk 101. We hope you will find it useful and informative. This edition features articles on accommodating employees, use of consents and waivers, and copyright trolls.

We have been very busy since our last publication which we hope indicates the value of our services. Our goal is to develop risk managers within the colleges and universities, therefore, please feel free to contact us at any time regarding any specific areas of risk management we can help you with (e.g. Enterprise Wide Risk Management).

It was great for us to meet so many of you at the recent joint conference 'Risk Management Behind the Wheel'. Networking is a valuable way for us to gain an understanding of specific issues whilst putting a face to a name. The presentations were all extremely well received and we thank you for your feedback. From the feedback provided, it appears this was our best conference to date and we are looking forward to an even better one next time.

Please feel free to contact us at protection.program@bcucipp.org with any suggestions for future topics and, as always, we will do our best to accommodate. Our previous articles are listed on our web site alphabetically under the Publications tab and we recommend using this as a growing library of useful information.

Andrew Green
Director, Client Services — Education

Staff Changes

We are very happy to announce that we have a new addition to our claims team to fill the role of examiner. Emily Kemshaw has replaced Darren Nelson who has moved to the Health team at the Risk Management Branch. Emily joins us from the private sector where she worked for nearly a decade in the Insurance Industry, most recently spending six years as an independent adjuster. Emily is a welcome addition to our team and she looks forward to meeting and working with you in her new role. ◀

An Accommodation that Passed the Smell Test

Accommodating an employee who is sensitive to fragrance is no small task. After all, airborne allergens in publicly accessible areas cannot be controlled nor do they affect all people. A recent human rights decision assessed what an employer did to accommodate its employee.

A teacher with a severe dust and scent allergy requested accommodation from the School District. Among other things, she was sensitive to laundry detergents, shampoos and Bounce fabric softener. The teacher claimed that she could not take medication to ward off some of the effects of scent and the only remedy was complete avoidance.

To accommodate the teacher, the School District did the following:

- In 2010, with collaboration from Human Resources, the teacher, and the union, an accommodation plan referred to as the “Exposure Control Plan” was put in place and updated over time during progress meetings with the union;
- The carpet in the teacher’s classroom was removed and replaced with linoleum;
- Signage about being scent-aware was posted inside and outside the classroom;
- Staff were advised what scent-free and scent-aware entailed and were asked to be respectful of the teacher’s condition. This was communicated during start-of-year staff meetings and, in a separate session, by the human resources manager and a union representative;
- The teacher and the principal collaborated on newsletters to parents and school-wide notices about being scent-free;
- All soap in the school was changed to unscented foam soap;
- Liquid white-out was replaced with white-out tape;
- The teacher was provided with an employer-paid cell phone so that she could contact the office from anywhere in the building if she needed to step away from her duties due to an exposure;
- The teacher was given a classroom with a door to the outside so she could step out if necessary;
- Because of the close working relationship between the special education assistant and the teacher, the principal defrayed some of the costs incurred by the education assistant in purchasing unscented products that she bought to accommodate the teacher;
- During school-wide events such as the Christmas concert, the education assistant would take students to the gym in place of the teacher.

Although the teacher had been transferred to a scent-aware school, she continued to experience reactions to scent. She eventually went on medical leave. The teacher then filed a human rights complaint against the School District and the human resources manager who managed her accommodation. The teacher alleged that they refused to accommodate the teacher by not providing or enforcing a scent-free work environment and that they subjected her to psychological harassment. The essence of her complaint was that because she continued to react to scent exposures at the school, she wanted more control over her environment, including over individuals –staff and students alike– by asking them to leave the room or even by having primary age children change their clothes and permitting her to wash the clothes at her home and return them.

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She also wanted control in common areas such as the computer lab, photocopier room, and the library.

The Exposure Control Plan was amended in February 2013 to provide that in the event the teacher suffered a scent exposure, she was to report to the principal or teacher-in-charge and if necessary, go home. She was not permitted to ask the students or their education assistants to leave the classroom. In one instance, she was advised that it was not appropriate that she had moved the children and their desks outside in 10°C weather, due to her perception of a scent.

While an employer is obligated to accommodate an employee to the point of undue hardship, the employee cannot expect a perfect accommodation and must work with the employer to achieve a reasonable accommodation. The Supreme Court of Canada has stated, “[i]f a proposal that would be reasonable in all the circumstances is turned down, the employer’s duty is discharged”¹. The Tribunal noted that the impact on others is one of the key considerations in Renaud.

No one can guarantee that a building accessible by the public will be entirely scent-free. Schools designated as “scent-aware” request through signage and newsletters that the parents/public/staff refrain from using scented products. The School District, however, did not have the authority to ban or discipline staff or students for wearing scents at school. Nor would the school be the only source of exposure.

To prove that she suffered discrimination, the teacher had to show that the School District, on a balance of probabilities, treated her adversely in her employment because of her dust and scent allergy and failed to appropriately accommodate her. If an employee’s disability cannot be accommodated without undue hardship, the complaint will not succeed.

After going on medical leave, the teacher did not seek further modifications to the Exposure Control Plan, which was the result of discussions between herself, her union, and the employer and which all parties had approved. The principal had also been diligent in documenting how he had responded to each and every complaint or concern brought forward by the teacher.

The human rights tribunal member found that the respondents took significant steps to accommodate the teacher, and that there was no evidence their efforts were somehow flawed. The Member agreed with the respondents that the process of reaching an accommodation or working within it once agreed cannot itself constitute a breach of the Human Rights Code or adverse impact² for harassment.

As a result, the teacher’s complaint was dismissed.

This case is a good example of an employer responding in a thoughtful and sensitive way to a difficult accommodation issue which required the balancing of a number of important interests. It

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also demonstrates the significance of collaboration in the accommodation process and the critical importance of documenting both any agreements reached and the resolution of any issues which may arise after agreements are signed off.

This accommodation indeed passed the smell test. ◀

Penny A. Washington, Partner, Bull Housser & Tupper LLP

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1 Central Okanagan School District No. 23 v. Renaud [1992], 2 S.C.R. 970

2 Petrar v. Thompson Rivers University and another, 2014 BCHRT 193

Consent Forms and Liability Waivers: A Discussion of Student Field Trips for Post-Secondary Institutions

On October 1st and 2nd, 2015 the conference Risk Management: Behind the Wheel: What's Ahead? was held at Kwantlen Polytechnic University. This was a collaborative effort between Kwantlen Polytechnic University, Thompson Rivers University, University of British Columbia, College of New Caledonia, Selkirk College and UCIPP. One of the sessions during the conference was presented by Carla Forth, QC, Partner, Guild Yule LLP and Kira Kenny, Senior Risk Management Consultant, UCIPP and provided valuable information on consent forms and liability waivers. For this presentation, Carla Forth and Mary Nguyen of Guild Yule LLP provided a paper that is relevant across both the schools and post-secondary sectors titled: Consent Forms and Liability Waivers: A Discussion of Student Field Trips for Post-Secondary Institutions.

INTRODUCTION

“Field trips can promote various aspects of student development by providing an active learning environment. Field trips can also present challenges to organizing parties, particularly educational institutions, and frequently raise questions about liability. What duty is owed to students on field trips? What should go into the waiver? What risks must be disclosed?”

This paper is intended to provide an understanding of your organization’s potential vulnerabilities, methods of evaluating risk, and exploring the role of waivers and informed consent in protecting post-secondary institutions.”

September 2015

To read the entire paper, please click [here](#). ◀

Copyright Trolls

Over the past few years, the University, College and Institute Protection Program (UCIPP) has been advised of letters threatening lawsuits from what have become known as “Copyright Trolls.” This article is intended to raise awareness of this issue among institutions. Care needs to be taken when images are downloaded from the internet either by employees or contractors of the institutions.

Copyright Trolls are stock image companies that have a large number of stock images, photographs, for which they purport to own the copyright to these images. These images cover a vast array of subjects, from the artistic to the mundane, and are displayed on the companies’ websites. The term Copyright Troll has emerged recently to describe the practice of some stock image companies of surveying the internet to see if there are any unauthorized uses of their images. If unauthorized use is detected, the stock image company sends a letter advising that a licensing fee has to be paid or the company will sue the alleged wrongdoer for copyright infringement.

A few BC schools have received these types of letters from two companies in Canada and the United States. What seems to have happened is that someone in the school, or connected to the school, was putting together a newsletter and searched the internet for an image to include in the newsletter to give it more visual appeal. There are websites on the internet where images can be downloaded for free. However, there are also websites that contain images for which the stock image companies purport to claim copyright ownership. In other words, these companies require a fee to be paid in order to use the image. It is not always clear whether a downloadable image on a website is free or not.

If you receive a letter advising that your institution has infringed a copyright, please forward that letter to the UCIPP. Please do not contact the sender yourself. Once UCIPP has considered the letter, we will advise you on the best course of action. ◀

Helpful Links

University, College and Institute Protection Program (UCIPP) receives inquiries on many risk related topics. We would like to remind you that UCIPP provides the institutions with many helpful tools and relevant articles on our website located at: <http://www.bcucipp.org>. If you have not already or it has been a while, please take some time to avail yourself of these resources. Some tools are the Employees' Handbook/Guide a guide to UCIPP coverage and multiple forms, including fire impairment notices or those for obtaining construction or optional property insurance. There are also clauses for user groups or occupancy agreements as well as our Insurance Matrix to assist you to determine which form of coverage should be used in a contract. In addition to this, you will find an abundance of resource articles covering risk related topics such as occupier’s liability, varying types of insurance coverage, legal commentaries, risks in contracts, indemnities, fieldtrips and the value of risk assessments as a highlight. We are always welcome to receiving new ideas on pertinent risk related topics that you would like us to write about. ◀

About Our Organization...

We are the Client Services Team for the University, College & Institute Protection Program (UCIPP). UCIPP is a self-insurance program which is funded by the Province of BC. The program is housed within the offices of the Risk Management Branch of the Ministry of Finance which also has responsibility for similar programs such as the Health Care Protection Program, and the Schools Protection Program. As part of the services of our program, we provide risk management and claims & litigation management services to UCIPP member entities.

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