

**AFTER-HOURS CONDUCT CONSTITUTES SEXUAL HARASSMENT,  
FINDS ONTARIO COURT OF APPEAL**

*Simpson v. Consumers' Association of Canada* (2001), 209 D.L.R. (4<sup>th</sup>) 214

**For more details please attend our annual Firm Seminar  
and hear Angela E. Rae speak about this case and related issues**

**Facts**

Mr. Simpson was the defendant's executive director. After his employment was terminated for sexual harassment, Mr. Simpson sued his former employer for wrongful dismissal.

**General Division**

The Ontario Court (General Division) (41 C.C.E.L. (2d) 179) agreed with Mr. Simpson that the employer did not have just cause to terminate his employment, finding that all of the alleged incidents of sexual harassment were either consensual or occurred outside of the workplace. The Court awarded Mr. Simpson 12 months' pay in lieu of notice, and an additional six months' notice for the employer's bad faith conduct.

**Ontario Court of Appeal**

This decision was overturned by the Ontario Court of Appeal. The Court of Appeal concluded that the location of the sexual misconduct was irrelevant. Incidents that took place outside of the workplace could still constitute sexual harassment in the circumstances. The particular incidents in question occurred during workplace events, or events where Mr. Simpson was in control, such as a conference at a hotel and Mr. Simpson's cottage.

In particular, the Court of Appeal reviewed six incidents that the lower Court had found occurred, but had not found to be cause for termination. The Court of Appeal found that cause for termination did arise out of the following six incidents:

- Initiating a sexually suggestive conversation with his 22-year old secretary, indicating to her that she would progress in the organization if she became sexually intimate with him, and ultimately, when she refused his advances, allowing their work relationship to deteriorate to the point that she felt she had to resign.
- Carrying on sexual conversations with the employer's legal counsel and taking her to a strip club.
- Having an affair with a secretary, the result of which was that the secretary received advantages over another secretary with whom Mr. Simpson was not involved. When the secretary ultimately terminated the relationship, their work relationship had deteriorated to the point that she felt she had to resign.

Toronto Office Tel: 416.408.3221 London Office Tel: 519.433.7270

- Swimming nude in the lake at his cottage in front of employees who had gone to the cottage to discuss business.
- Going into a hot tub nude with a partially dressed secretary and other employees at a hotel following a board meeting.
- Squeezing the buttocks of the employer's bookkeeper while she was bending over.

The Court of Appeal concluded that, for the purpose of analyzing the incidents in question, the "workplace" must be defined to include places other than the physical workplace and places at which the employer sponsored events.

In part, the Court of Appeal's findings in *Simpson* turned on the fact that Mr. Simpson was the employer's executive director. For example, the Court found that he could not hide behind the employer's lack of a sexual harassment policy, since such a policy would have been Mr. Simpson's responsibility to create.

Further, the Court found that Mr. Simpson could not rely on the general acceptance in the workplace of sexual conversations and nudity because those elements had only been part of the workplace since he had introduced them.

Ultimately, the Court of Appeal found that the employer had cause to dismiss Mr. Simpson based upon the six incidents set out above because as executive director, Mr. Simpson's job was to ensure that sexual harassment did not occur and to protect both the employees and the employer from complaints of offensive conduct. Mr. Simpson failed to meet those obligations.