

# A Walk-through of the Employment Relationship

**STARRING:**



**John**



**Jane**



**Charlotte**



**Todd**

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## TOPICS

- 1) Employee Interviews
- 2) The Contract
- 3) Employee Disability (Short-term and Long-term)
- 4) Performance Management
- 4) Discipline & Termination
- 5) Constructive Dismissal
- 6) Breaking the Contract

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## Employee Interviews: Human Rights Code

### Prohibited Grounds

- race, colour, ancestry, place of origin,
- political belief, religion,
- marital status, family status,
- physical or mental disability,
- sex, sexual orientation, gender identity or expression,
- age
- conviction of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

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In accordance with the CISVA Policy, the purpose of this interview is to evaluate:

- How this candidate could support the mission of CISVA
- Discuss the attitudes and practice of the candidate as a Catholic educator
- Confirming teaching credentials and degrees (check the Teachers' Regulation Branch (TRB) to verify these credentials) and possible TRB disciplinary history
- Review of resume and, if presented, the applicant's portfolio
- Assess the applicant's ability to contribute to the School Growth Plan and how this person sees their role
- Verify skills, attitudes, previous experience, interests\*\*, etc.
- Assess the degree to which the candidate meets criteria of the available position
- Assess how this person will fit with the staff and the culture of the school\*\*
- Assess the applicant's level of extra-curricular activity skills and experience

John's Interview :





- a. Where are you from originally? – STOP – question could raise the risk of a claim for discrimination on the basis of place of origin
- b. Are you married – STOP – this question is not relevant to the qualifications for the position
- c. Why do you want to work at a Catholic School? – GO - OK!
- d. What is your native language? – STOP – this question could raise the risk of a claim for discrimination based on race, place of

TIPS:

- Re-phrase questions in order to focus on the key job requirements and capabilities.
- Try to focus on the interviewee's resume, and draw questions from the resume

Alternative Questions

- "where are you from originally" → "I see you have teaching experience in another country, could you tell

<p>origin, and/or ancestry</p> <p>e. What volunteer activities are you engaged in? – CAUTION – this question may result in disclosure of information about political affiliations or other protected grounds. Better to re-phrase the question based on the extra-curricular activities listed on the applicant’s resume.</p>	<p>me a bit about that experience”?</p> <ul style="list-style-type: none"> <li>• “What is your native language” → “ Do you have any language skills that you would bring to this position?”</li> </ul>
<p>Charlotte’s Interview</p> <p>a. Questions: are you pregnant – STOP – this question could raise the risk of a claim for discrimination based on gender.</p> <p>b. How would you support the mission of the CISVA as a teacher? – GO –OK!</p> <p>c. I see that you are a member of ___ Parish, what activities are you engaged in with that Parish? – GO –OK!</p> <p>d. do you have any disabilities? – STOP – this question could raise the risk of a claim for discrimination based on disability</p> <p>e. This Phys Ed position involves a camping and hiking field trip, how would you ensure that children are kept safe on that field trip? – GO – OK!</p> 	<p>Alternative Questions</p> <ul style="list-style-type: none"> <li>• Are you pregnant? → Do you anticipate that you will be available for the full duration of the contract period? Or, “ do you have any anticipated absences during the contract period?”</li> <li>• Do you have any disabilities? → Do you have any restrictions or limitations that would interfere with your ability to provide a safe environment for your students at all times?</li> <li>• You may also wish to consider asking all candidates whether they require any accommodations for the interview process, before you meet them.</li> </ul>
<p>Jane’s Interview</p>  <p>Jane</p> <p>a. How old are you – STOP – this question is not relevant and could raise the risk of a claim for discrimination based on age</p> <p>b. How many children do you have? – STOP - this question is not relevant to the position and could raise the risk of a claim for discrimination based on family status.</p> <p>c. Are you aware of the church’s teachings on cohabitation? – CAUTION – this question is acceptable in the context of a CISVA interview but would not be acceptable in a non-religious institution</p> <p>d. Have you ever been arrested? – STOP – this question could raise the risk of a claim based on offence not relevant to the position. All candidates are pre-vetted prior to the interview, so it is not</p>	<p>Alternative Questions</p> <ul style="list-style-type: none"> <li>• How old are you? → How many years of teaching experience do you have?</li> <li>• How many children do you have? → Do you have any other experience with children?</li> </ul>

necessary to ask this question.

## Best Practices for Employee Interviews

- Fair process focused on essential job duties
- Develop a set of questions in advance, based on essential job duties and bona fide requirements
- Ask all applicants the same questions (with flexibility)
- Ensure the interview process is the same for all candidates and determined in advance, subject to accommodation needs
- Request that all applicants advise in advance (preferably on the notice/offer of interview) whether any accommodations are needed to participate in interview process
- Make sure questions comply with the Human Rights Code and avoid questions on the prohibited grounds set out in the Code (especially important when evaluating "fit", attitudes and "interests")

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## After the Interview

Unfortunately Jane was not selected for the position.



Jane

That is too bad. Why didn't I get the job?

Jane, you have not been selected for this position. We appreciate your interest and wish you best of luck.



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Best practice for unsuccessful candidates:

- Advise unsuccessful candidates that you have simply selected another individual for the position
- No need to provide any reason for not choosing, deflect question by advising that you chose a candidate that had a more successful application
- Avoid terms like “fit”
- If the candidate presses for constructive feedback, advise them that you will review your notes and call them back or send them a message at a later date, so you have time to carefully craft your response

## The Contract

Hooray! John has been offered a position.



**John**

I'm a new employee on a fixed-term contract. What are the key contract provisions I should be aware of?

- Fixed term
- Not renewable
- Catholicity Clause
- Termination by mutual agreement
- Policies incorporated

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## The Contract

Todd is a returning teacher who was on a fixed-term contract last year. He is returning on a long-term contract.



**Todd**

What are the key terms of the long-term contract?

- Indefinite term
- Catholicity clause
- Policies incorporated and excluded
- Termination provision
- Duty to mitigate
- ILA

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# Employees with Disabilities: Best Practices

## Information & Documentation

Gather all necessary information as soon as a report of disability is received.

Always keep written records of meetings, strategies, proposals, and all relevant information relating to the disability and attempts made to accommodate it.

## Consultation

Meet with the employee regularly to determine what accommodations are needed and whether they have been effective.

Work cooperatively with the employee to gather all information available and the employee's position on accommodation options. Obtain feedback from the employee.

## Accommodations

Find out what accommodations are needed for the employee.

An employer's duty is to accommodate to the point of "undue hardship"

Employers have a duty to inform themselves about accommodation options.

Be receptive.

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## Long-Term Disability

Dear Charlotte,

Please have your doctor answer the following question:

- a) What underlying medical conditions prevent Charlotte from returning to work?
- b) What treatments is Charlotte receiving and how long have these treatments occurred for?
- c) When is Charlotte anticipated to return to work and what objective evidence supports that opinion?
- d) If Charlotte is able to return to work, what, if any, working restrictions will he/she have and how long those restrictions are anticipated to last for?

Give a deadline for providing updated medical information, and make clear that failure to provide that information may result in frustration of contract.

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## Frustration

- At a certain point, where an employee's disability prevents the performance of the essential functions of the employee's job for a sufficient period of time, one can safely conclude in a practical or business sense, that the object of the employment has been **frustrated**.
- The Key question is whether the illness or disability is "permanent", not based on permanent or total disability in the medical sense, but in terms of a "practical or business sense"
- Most cases involve 3-5 years of permanent disability



## Has a Contract been Frustrated?

- Has the employer sought out medical evidence from the employee regarding ability to return to work?
- Has the employer attempted to accommodate the employee through GRTW programs?
- Has the employer obtained clear, credible and current medical documentation demonstrating that there is no reasonable likelihood that the employee will be able to return to work in the foreseeable future?



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# Performance Management

## Documentation

Always keep written records of meetings, strategies, and proposals for performance management.

Ensure that you follow the CISA policy regarding teacher evaluations.

Prepare a letter of expectation setting out how the employer will assist in meeting expectations.

## Consultation

Keep lines of communication open and have frequent meetings with employees to ensure that they understand your expectations, and how the employer will assist in meeting those expectations.

Follow up to determine whether performance has improved by a set date.

## Considerations

Be sure to consider whether the performance issues may be related to a disability (as previously discussed).

Ensure the employee is forewarned about the consequences of continued failure to meet expectations (e.g. discipline).

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Main objective is

- to support the teacher
- ensure expectations are communicated to the teacher
- inquire whether there are any issues that the teacher needs to apprise you of that may be preventing/inhibiting his/her ability to meet expectations
- inquire if the teacher requires any accommodations to assist meet those expectations. Be aware of potential invisible disabilities. Be sensitive and open minded.
- Collaborate with teacher and prepare a “plan” on how the teacher will meet those expectations in the future
- Provide or make available resources and assistance to the teacher
- Advise the teacher how you, as the employer, will assist him/her in meeting expectations
- set a time for follow up meeting to discuss the teacher’s progress or lack thereof
- document all of the above and have the teacher sign a copy so that they indicate they have understood all of the above.
- Provide one copy to the teacher for his/her file
- Keep one copy for your file.
- These are not disciplinary meetings.
- If teacher continues to fail to meet expectations without explanation; you must advise teacher that next step would be disciplinary action, up to and including disciplinary letter and or termination of employment. When disciplinary action is ultimately taken by employer, it should come as no surprise to teacher as you have given warnings

## Performance Management: Off Duty Expectations

Finally, the summer holidays roll around.



**Todd**

Hooray!! I'm not going to check my work email all summer!  
And I'm going to post some pictures of myself modelling speedos on Facebook!

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### Off-duty email

- Reasonable to expect teachers to check email at least once prior to start of class, but not on a regular basis all summer
- Try to provide advance notice re email expectations and any urgent information that will be sent out (e.g. "please expect an important email around July 5 and ensure you check you emails and review it prior to the start of classes")

### Social Media

- Staff expected to act in accordance with social media policy
- Ensure staff are kept informed and reminded about proper online conduct and social media, and particularly in terms of reputation and interaction with students

## Employee Discipline

John's performance management issues have continued to be a problem, despite many meetings on the issue. What happens next?



**John**

Still no watch.

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### Employee Discipline

- Document, document document!
- Progressive discipline through performance management
- Ensure expectations are clear and understood
- Formal disciplinary letters – retained in file permanently
- Can add an addendum to file once the issue has been resolved, indicating it was satisfactorily dealt with

## Termination

Todd is being let go from his position. He has some questions.



Sorry

That is too bad. Am I being terminated for cause, or without cause? What sort of notice am I being given?



**Todd**

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- All terminations usually have a reason; however “termination with cause” is a legal term and it is a very high threshold to meet
- Typically, termination will be without cause
- Do not need to provide employee with the reason when terminating without cause
- Notice period is specified in the employment contract
- If employment contract is silent on notice period, it will be based on reasonable notice under common law
- Always consult legal counsel before considering a termination for cause
  
- Your insurance (Catholic Mutual) requires that you consult with legal counsel prior to any steps taken. Failure to do so may prejudice your rights under the insurance policy.



## Constructive Dismissal

Charlotte returns from her disability leave.  
Her former position has been filled.



You won't have a problem taking on new duties and responsibilities in a modified role, right?



**Charlotte**

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- Constructive dismissal occurs when:
  1. Unilateral change in a fundamental term of an employment contract by the employer. Employer is considered to have breached the contract, so the employment contract is considered to no longer be valid. The employee can then pursue damages for the breach and the lack of reasonable notice.
  2. an employee is subjected to workplace bullying and harassment that is not sufficiently dealt with by an employer. This is can create a “toxic work environment” which may be a breach of the employer’s implied contractual obligations to maintain a safe work environment for the employee.

## Constructive Dismissal

### **Fundamental changes:**

- Change in compensation
- Change in job duties or title (in some cases)
- Change in permanent work hours
- Change in permanent location (in some cases)

### **Not fundamental changes:**

- Temporary extra hours or participating in extra-curricular activities
- Change in grade level

- Not all terms of a contract are considered 'fundamental'.
- The typical test is "what would a reasonable employee consider to be a fundamental change?"
- CISVA contract allows for a change in grade level for teachers, or for other minor modifications in duties which remain consistent with the role of a teacher



## Constructive Dismissal: Bullying & Harassment

Charlotte informs you that she is being bullied by another teacher at school. What should you do?

I am being bullied.  
Please help.



**Charlotte**

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- Take all complaints seriously
- Report promptly and objectively on the complaint to the appropriate channel and be responsive to the complainant
- Bullying and harassment in the workplace – workplace safety issue.
- CISVA has a bullying and harassment policy that sets out the steps that must be taken when a report of bullying or harassment is received.
- Worksafe BC requires steps to ensure that the employee is reasonably safe in work environment, and has set procedures to follow in response to complaints of bullying and harassment by staff

## Employee Breach of Contract

After returning from the summer break, John approaches you and informs you that he is leaving teaching permanently (he wants a job that doesn't require him to be punctual).

What happens next? Do you have any recourse?

I'm leaving. Sorry for the late notice. See ya!



**John**

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- Employees have a duty to provide notice of intention to leave a contract
- It is possible to pursue a legal claim against an employee who breaches their contract without notice, if this breach causes sufficient damage to the employer
- HOWEVER, typically, the costs of pursuing an employee for breach of contract far outweigh the potential damages award that might be obtained.
- Best approach is to ensure employees are aware of their duty to provide notice, and to try to encourage them to do so.

## Thank You!



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