

## Current Workplace Issues

### Harassment

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Few workplaces escape the problem of an employee who feels that he or she has been dealt with unfairly by superiors or co-workers and becomes stressed and perhaps less productive as a result. A personality conflict can escalate into complaints of "harassment" which can poison the atmosphere, disrupt productivity, and leave deep scars on all concerned. Unless the matter culminates in discipline or termination, or involves sexual harassment or discrimination on prohibited grounds, there is seldom an accessible formal process to deal with such a situation. Lawyers find themselves in the position of advising employees who feel that they have been "harassed" that there is no immediate legal remedy. The following case shows what can happen when, unusually, such harassment is the subject matter of a collective agreement, opening the way for an arbitrator to hear the complaint.

The employees of the British Columbia Department of the Attorney General had entered into a collective agreement with their employer in which they recognized the benefit to be derived from a work environment free from harassment, which was defined as:

"deliberate gestures, comments, questions, representations, or other behaviours that ought reasonably to be known to be unwelcome by the recipient and which serve no legitimate work related purpose . . . [It] does not include actions occasioned through exercising in good faith the Employer's managerial/supervisory rights and responsibilities."

A separate portion of the collective agreement dealt with sexual harassment, which was not in issue here.

The grievor complained that since he had become a shop steward he was subjected to a continuing course of conduct from three individuals which amounted to personal harassment; the incidents included allegedly inquiring into his personal life, leaving notes on his desk implying that he was misusing doctors' appointments and falsifying job applications, requiring him to come to meetings to discuss his conduct, and denying him opportunities for advancement. Prior to that time, he had received very satisfactory evaluations and had never been disciplined.

In an extensive review of the facts and the interpersonal dynamics of this situation, the arbitrator found that the grievor and the three individuals perceived the facts from very different perspectives. The grievor honestly believed that they were harassing him, but overreacted to their actions and words. On the other hand, the three individuals demonstrated insensitivity to how the grievor would experience their interactions with him and, by their "zealous behaviour," contributed to the grievor's troubled views and relationship with them. Their behaviour was unfortunate and of questionable judgment, but the arbitrator found that it did not amount to "harassment" as defined in the collective agreement.

The arbitrator was particularly troubled by the fact that the three had mailed allegations to the grievor that he had falsified documents. However, the grievor's reluctance to speak to them about it, understandable in view of the lack of communication, apparently contributed to the finding that this action was not a bad faith exercise of supervisory

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responsibilities. It was noted that the actions of the supervisors did reflect bad judgment, insensitivity, "and a failure to realize that good and effective supervision requires open and direct communication."

The arbitrator described "harassment" and its application in part, in this case, as follows:

"In these times there are few words more emotive than harasser. It jars our sensibilities, colours our minds, rings alarms and floods adrenaline through the psyche. It can be used casually, in righteous accusation, or in a vindictive fashion. Whatever the motivation or reason for such a charge, it must be treated gravely, with careful, indeed scrupulous, fairness given both to the person raising the allegation of harassment and those against whom it is made.

I do not think that every act of workplace foolishness was intended to be captured by the word 'harassment'. This is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. It should not be trivialized, cheapened or devalued by using it as a loose label to cover petty acts or foolish words, where the harm, by any objective standard, is fleeting. Nor should it be used where there is no intent to be harmful in any way, unless there has been a heedless disregard for the rights of another person and it can be fairly said 'you should have known better'."

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