

July 2024

Environmental Scan



Apple store leader seeks damages alleging bullying, harassment by supervisor

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) in Ontario recently dealt with a case involving workplace harassment, constructive dismissal, and the interplay between civil actions and workers' compensation benefits.

This decision sheds light on the delicate balance between an employee's right to pursue civil remedies and the statutory bar against certain actions under the Workplace Safety and Insurance Act (WSIA).

The case centred around a worker who had been employed by Apple Canada Inc. since May 3, 2010, most recently holding the position of store leader.

Apple supervisor's harassment and bullying

She alleged she experienced harassment and bullying from her supervisor over a 13-month period, from February 2016 to March 2017. This led to three medical leaves of absence due to anxiety and depression.

The worker took her first medical leave from April 17 to May 31, 2016, resumed work briefly, then took another leave from June 2 to October 2016. She returned to work for a few months before taking a third medical leave in March 2017, from which she had not returned at the time of the hearing.

Police coverup, corruption and harassment case to move ahead in Ottawa court

A recent court ruling in Ottawa paves the way for a potentially explosive case involving a woman police officer who blew the whistle on alleged bullying, harassment, corruption, abuse of power and coverup at an Ontario police force that remains under a provincial investigation.

Sgt. Nicole Whiteway's lawsuit reads like a Hollywood script, detailing horrific domestic abuse that she alleges was exacerbated by a web of conspiracy on the part of her colleagues and superiors, complete with a twist ending that includes a death certificate from Mexico.

But it all began with an internal workplace harassment complaint she filed with the Durham Regional Police Service in 2016.

The case has since spiralled into accusations of unlawful conduct, targeted malice and retaliation involving one of Durham's highest-ranking cops, Uday Jaswal, who would later take on the rank of deputy chief with the Ottawa Police Service, but quit in disgrace.

Details of Whiteway's saga in part spurred Ontario's solicitor general to call for an investigation in 2019.

Court rules Florida's 'stop woke' law restricting business diversity training is unconstitutional

A Florida law pushed by Republican Gov. Ron DeSantis that limits diversity and race-based discussions in private workplaces is unconstitutional, a federal appeals court has ruled.

A three-judge panel of the 11th U.S. Circuit Court of Appeals on Monday upheld a Florida federal judge's August 2022 ruling that the so-called “Stop WOKE” act violates the First Amendment as it applies to businesses and is impermissibly vague.

“By limiting its restrictions to a list of ideas designated as offensive, the Act targets speech based on its content. And by barring only speech that endorses any of those ideas, it penalizes certain viewpoints — the greatest First Amendment sin,” Circuit Judge Britt C. Grant wrote for the court. The governor's office Tuesday was considering options for a further appeal.

“We disagree with the Court’s opinion that employers can require employees to be taught—as a condition of employment—that one race is morally superior to another race,” the governor's office said in an email. “The First Amendment protects no such thing, and the State of Florida should have every right to protect Floridians from racially hostile workplaces.”

Washington's new Stripper's Bill of Rights is promising in all the right ways

Earlier this year, the Washington State legislature adopted Bill SB 6105, better known as the Strippers' Bill of Rights, a new state law that will protect strippers' rights in the workplace. This law began as a grassroots effort in 2018 led by the organization Strippers Are Workers, when dancers, fed up with the lack of safety and labour protection at work, started to organize.

This bill will provide strippers with protection in terms of occupational health and safety, labour law, and have a positive impact on our human rights in the workplace. There are also some interesting clauses that try to preempt further moral panics, safeguards against Footloose.

As a stripper in Ontario, I was amazed at how much better strippers were treated in Washington compared to in Ontario during the pandemic. At one point during the pandemic, there was a huge moral panic and ensuing media circus when as a knee jerk reaction to Covid-19 outbreaks at two Toronto strip clubs, the province enacted a blanket closure of all the provinces' strip clubs, while adjacent businesses such as bars, nightclubs and pole dancing studios were allowed to remain open.

Opposition questions P.E.I. government about harassment complaints

The P.E.I. government is promising to make data around harassment allegations within its workforce more public.

The Official Opposition first raised the topic Tuesday in the legislature when Liberal interim leader Hal Perry tabled information he had obtained through a Freedom of Information request.

It showed two complaints were filed in 2021 by people who worked in the province's executive council office, the cabinet division of government. But no other details were shared. Premier Dennis King, who is in charge of cabinet, said he knew nothing about the complaints.

On Wednesday, Finance Minister Jill Burridge brought back the breakdown of complaints across the public service in the last five years. Those numbers included seven complaints in the 2020-21 fiscal year, and 14 in 2022-23.

King said Wednesday that the government acted on recommendations from the investigations and nobody signed a non-disclosure agreement.

Surrey Police Union alleges bullying and harassment by RCMP in bid to join court battle

The ongoing saga of Surrey policing has yet another chapter.

Last Friday, the Surrey Police Union filed court documents alleging harassment and bullying by Surrey RCMP members. The allegation is part of an application by the union to become a party to the petition started by the City of Surrey. That petition, and its subsequent amendment filed earlier this month, aims to halt the transition in Surrey from the RCMP to the Surrey Police Service.

The lawyer for the union, Sebastian Anderson, said Wednesday that the alleged harassment and bullying has delayed the transition from the RCMP to the SPS—and is one of several reasons the province was correct in ordering the transition to go ahead.

“The allegations are that the workplace is poisoned, a toxic workplace, as a result of bullying, harassment and intimidation,” said Anderson.

The union claims in its court application that the alleged harassment has been a factor in causing some SPS members to leave the service.

\$2M of taxpayer money already spent investigating alleged Durham police corruption

An investigation into alleged criminal activity, cronyism and harassment at the Durham Regional Police Service has already cost taxpayers more than \$2 million in legal fees, CBC has learned.

After five years of legal jousting between publicly funded agencies, the police inquiry into the Toronto-area service has no end in sight. Questions are now being raised about whether there will ever be clear answers, accountability and value for the millions spent.

"I think John Q. Taxpayer would have a significant problem with that," said Danardo Jones, an associate professor in the faculty of law at the University of Windsor who researches police oversight.

"It's a lot of money ... being used to stymie oversight and stymie accountability for police officers who are supposed to be standard-bearers when it comes to upholding the law." The province's solicitor general first called on the Ontario Civilian Police Commission (OCPC), a police oversight body, to investigate the issues within the Durham force in January 2019.

Since then, several Durham police leaders implicated in the initial allegations have either resigned or retired and the commission itself is set to dissolve according to the new Community Safety and Policing Act.

The importance of honesty in workplace investigations

In the recent case of *Mittra v. Royal Bank of Canada et al.*, 2024 ONSC 636, the Superior Court of Justice in Ontario has ruled on the consequences of withholding the truth in workplace investigations, especially for senior employees.

The court's decision demonstrates that a fiduciary employee's deliberate intention to deceive workplace investigators about personal investments contravened the workplace code of conduct, resulting in after-acquired termination without cause. This case highlights fiduciary employees' duties of loyalty and avoidance of any conflicts of interest that may affect their employer.

In 2024, Andrew Mittra, a former employee of the Royal Bank of Canada (RBC) and RBC Investor Services Trust in London, UK, found himself at the center of a workplace investigation. This investigation highlighted his financial entanglements with a co-worker, leading to accusations of misconduct and, ultimately, his termination. Mr. Mittra vehemently denied any wrongdoing, including violating RBC's conflict of interest policies or withholding information about his estate investments, which were the cited reasons for his termination.

Federal government consultant charged for \$250,000 timesheet fraud

The Royal Canadian Mounted Police (RCMP) has charged a federal government consultant for fraudulently overbilling the federal government for an amount totaling about \$250,000.

RCMP's Federal Policing's Sensitive and International Investigations Unit (SII) charged Clara Elaine Visser, aged 68, with one count of fraud over \$5000 contrary to Section 380(1) of the Criminal Code.

The case was referred to the RCMP by Public Services and Procurement Canada (PSPC).

"This investigation is a great example of collaboration between the RCMP and PSPC," said Supt. Jeremie Landry, officer in charge, Sensitive and International Investigations Unit, RCMP Central Region. "It demonstrates that we are committed to keeping our nation safe, by protecting the integrity of the federal government and preventing the abuse of tax payers' dollars."

In the summer of 2021, PSPC launched an investigation into Visser's activities. The federal consultant undertook contract work with eight separate federal departments and Crown corporations.

Accessibility commissioner asked to address recommendations of report looking into claims he mistreated staff

Justice Minister Arif Virani has asked the country's first accessibility commissioner to address the recommendations coming out of an external investigation into claims that he mistreated staff at the Canadian Human Rights Commission.

The third-party investigation into Michael Gottheil, which cost taxpayers more than \$230,000, is complete and the final report has been issued to Virani, says the Department of Justice.

The commission told CBC News in a statement that Gottheil "will be continuing in his role."

The government hired consulting firm Quintet Consulting to investigate more than a year ago after a handful of employees raised concerns about Gottheil's conduct in 2022.

The staffers said Gottheil had a "toxic impact" on the workplace and claimed they were in a "psychologically and unsafe work environment" but did not provide specific examples, according to a letter CBC News has viewed.

Virani's office wouldn't say what the investigation found or recommended. It said it would not comment in order to protect the "integrity of the process."

Employer must pay \$40,000 to nurse fired after workplace assault

A New Brunswick arbitrator has ordered the province's francophone health authority Vitalité to pay \$40,000 to a nurse who was fired after she fell victim to a workplace assault.

The incident happened on March 11, 2019. Natasha Poirier, a former nurse manager at the Dr. Georges-L.-Dumont University Hospital Centre was attacked by Bruce (Randy) Van Horlick, the husband of a patient, who wanted his wife moved to a quieter room.

Van Horlick pulled Poirier from her chair by her hair, punched her on the temple, threw her against a wall, twisted her arm and several fingers backward, according to a CBC report.

He also assaulted another nurse, Teresa Thibeault, who tried to intervene. The attack lasted 11 minutes, according to the report.

Earlier this year, Saskatchewan started requiring employers in the province to let new hires know about the history of workplace violence in their workplace.

Outpouring of support for Canada Post worker who faced homophobic harassment

There has been an outpouring of support for a Canada Post worker who says he was the victim of homophobic harassment in the workplace.

The letter carrier, who does not want to be identified and is going by the name "Fred," says he has been bullied at work for over a year.

"It's not normal," he said of the harassment.

After sharing his story, signs with "Nous sommes Fred," or "We are Fred," have been on display at several Canada Post facilities across the province. Fred first spoke with CTV News after he discovered one of his co-workers had written his name inside a drawing of a penis in the office bathroom. He says his desk and delivery truck were also defaced with the word "p-d," a derogatory term for gay men in French.

The final straw, he says, was when a letter containing similar slurs was sent to his home address.

"After seven months, I said to myself, 'that's enough stress,'" he said.

Canadian employees thinking of suicide at high rates: what can HR do differently?

A new survey of Canadian workers has revealed alarming statistics: 23% had thoughts of self-harm or suicide in the previous two weeks, and 36% had such thoughts in the previous year.

"These statistics serve as a wake-up call for employers to recognize and address the mental health crisis within the workplace," said Ramakant Vempati, president and co-founder of mental health provider Wysa, which surveyed 2,000 workers across all industries in Canada in February.

"Even one person contemplating suicide or self-harm is too high. The average person will spend one-third of their lifetime at work, so companies have an opportunity to play a pivotal role in supporting individuals."

Other low feelings cited by the survey include:

- isolation or withdrawal while at work (31%)
- emotional distance from others (36%)
- dwelling on the past (28%)
- a persistent feeling of hopelessness (23%)

Privilege in workplace Investigations

As the trend towards increased workplace investigations and retaining third party investigators continues, so does the need to consider issues of privilege and what is protected in the investigative process. The recent Alberta decision of *Prosser v. Industrial Alliance Insurance*, 2024 ABKB 87, shed light on this topic, examining how the purpose and use of an investigation can impact where the privilege line is drawn.

In *Prosser*, the court ordered the disclosure of documents collected by a human resources consultant during a workplace investigation. The consultant was retained by the employer to investigate allegations of harassment by an employee. The plaintiff employee was terminated for cause following the investigation.

The employee sought the disclosure of various documents collected and created in the investigation including the transcripts and recordings of interviews, but not the investigation report itself, which communicated the findings to the employer and its counsel. The employer took the position that these documents were protected from disclosure by both litigation privilege and solicitor-client privilege, as they argued that the investigation had been undertaken in anticipation of litigation and for the purpose of obtaining legal advice.

A two-way street: Mental health can't be ignored during work injury recovery

Discussions about mental health in the workplace have surged lately, driven by growing awareness of its impact on employee and organizational success. As occupational health researchers, these discussions have helped us shed light on the precursors and consequences of mental health challenges.

One such critical but often overlooked aspect is the relationship between mental health challenges and work injuries — a relationship that goes in both directions: struggling with mental health can increase the risk of work injuries, and work injuries can give rise to, or worsen, mental health challenges.

We aimed to shed light on this crucial bidirectional relationship because it undermines the sustainability of an organization's most crucial asset: its people.

Mental health challenges and work injuries result in significant costs for organizations and society, and tremendous suffering among individuals and their families, workplaces and wider support systems.

While the costs for work injuries and mental health challenges vary widely, evidence indicates that experiencing both together can multiply medical expenses and time loss from two to 10 times.

\$175K settlement comes 9 years after woman filed sexism complaint against Winnipeg manufacturer

After nine years of waiting for a decision in a human rights complaint, a Winnipeg woman has been offered \$175,000 in compensation, minus some deductions, by her former employer after she complained about a sexist atmosphere in the workplace.

The complaint was filed by Gwen Jaques against her former employer, Price Industries, a large multinational manufacturing company based in Winnipeg.

Jaques filed a complaint with the Manitoba Human Rights Commission in 2015 after she was dismissed in June that year from her sales job at the company, which makes products such as air purification equipment.

The complaint alleges that in violation of the Manitoba Human Rights Code, Jaques was discriminated against on the basis of her sex and her age at the time (53), and that she was subjected to harassment. The company denies the allegations.

Her dismissal was "devastating," Jaques told CBC News. "I lost my way to earn an income and to work."

Remote workers – out of sight shouldn't be out of mind

While I appreciate that COVID-19 has become a dirty word, there are many lessons that we can (and should) take away from that roughly 2.5-year period.

For example, the exponential increase in remote work arrangements came about from the pandemic and remote work is not going away. I personally think this is great, if remote arrangements engender trust and are used appropriately.

When I discuss remote work – or what was formerly known as “telecommuting” – I mean an arrangement where workers perform their job duties outside of a traditional office setting, typically from home. While this arrangement offers flexibility and convenience, it also raises important questions about the administration of workplace occupational health and safety (OHS) and workers' compensation (WCB) coverage.

In British Columbia, as in many jurisdictions, OHS and workers' compensation issues are dealt with conjointly by one government entity. In BC, WorkSafeBC is the provincial agency responsible for ensuring workplace safety and administering the WCB system.

Remote workers, like those in brick-and-mortar offices, stores or other workplaces, fall squarely within the oversight and requirements of WCB legislation. However, the experience of the last few years seems to indicate that many remote workers are forgotten (or are an afterthought) when considering and applying OHS processes. This situation creates a critical potential blind spot (read: liability) for employers.

Judge rules Lennoxville, Que., CEGEP director's actions led to manager's psychological injury

A labour tribunal judge has ruled the head of Champlain College Lennoxville caused a workplace injury.

In her decision on July 19, Judge Valérie Lizotte said Nancy Beattie's behaviour led former manager Jennifer Coley-Gomez to being diagnosed with adjustment disorder with symptoms of anxiety and depression. The 2021 diagnosis legally amounted to a workplace injury, with a doctor linking the diagnosis to psychological harassment at work and prescribing a work stoppage.

Beattie, who has been suspended with pay since January, was alleged to have created a toxic work environment at the college in Montreal's Eastern Townships.

Champlain Regional College had argued personal factors relating to stress could explain Coley-Gomez's diagnosis.

But the judge found that the province's workplace health and safety board was right to give Coley-Gomez compensation for her injury, something the college had been contesting.

Tribunal to hear ex-legislature constable's complaint of discrimination

A complaint by an Indigenous constable that members of the legislature's protective services team and supervisors discriminated against him will be heard by the B.C. Human Rights Tribunal, after an adjudicator allowed it to proceed.

The constable, Paul Reynolds, alleged in his complaint that over the course of two years, other constables with the protective services team told him he was not wanted on a shift, showed him a video of a white man kicking two Indigenous people while laughing, and put job applications for Walmart and McDonald's in his personal work mail slot.

Reynolds also alleged in the complaint that his supervisor did not stop the behaviour, and instead actively participated, and that the acting sergeant-at-arms did not adequately respond to the incidents.

Reynolds worked as a constable at the B.C. legislature for two years, starting on Sept. 23, 2019. WorkSafeBC accepted his claim for an adjustment disorder as a result of workplace bullying and harassment, the tribunal decision says.

Reynolds alleged that early in his time at the legislature, one of his co-workers, who was watching a TV news story about Indigenous people holding a protest, commented "we are always catering to these people," or words to that effect.

Later, the constable told Reynolds he "was not wanted on the shift," the decision says.

He alleged that over the years he worked with the other constable, the man yelled at him in front of co-workers and tried to intimidate him, including blocking his car just before a shift change at 5 a.m. on Sept. 20, 2020.

Internal federal public service report details racism in the Privy Council Office

An internal report from the federal public service released Monday says Black and racialized Privy Council Office employees experience racism and discrimination in the workplace.

“Black and racialized employees – through dozens of examples of racial stereotyping, microaggressions, and verbal violence – described a workplace culture where such behaviour is regularly practised and normalized, including at the executive level,” the report says.

The Coalition Against Workplace Discrimination obtained the report using the Access to Information Act. It details barriers for employees of colour at the Privy Council Office, the administrative arm of government that serves the Prime Minister’s Office and cabinet.

The conclusions were based on group discussions and interviews with employees in 2021 and 2022.

It shows Black and racialized employees described being passed over for opportunities given to white colleagues, and cites the example of Black employees who said they had to intervene with managers who used the N-word “comfortably in their presence.”

Shocking Internal Report Exposes Rampant Discrimination at the Head of Canada's Public Service

Today, the Coalition Against Workplace Discrimination released an internal report obtained through the Access to Information Act, which revealed blatant and widespread discrimination at the Privy Council Office (PCO). The federal government is Canada's largest single employer, and it relies on the Privy Council Office to manage the public service, while also supporting the Prime Minister and the federal Cabinet. As such, the findings are extremely troubling, and a concern to all Canadians.

Through interviews with staff conducted over the course of six months, Dr. Rachel Zellars discovered a workplace where racial stereotyping, microaggressions, and verbal violence was regularly practiced and normalized, including at the executive level, and a culture that discouraged reporting, and lacked accountability mechanisms. Further, Dr. Zellars found that white employees and executives detailed career-advancing opportunities that were in stark contrast to those of Black, Indigenous, and racialized employees, who were clustered in temporary and lower-level positions.

In 2021, the then Clerk of the Privy Council, Ian Shugart, issued a Call to Action to public service leaders to take specific and meaningful actions to address racism, equity, and inclusion. But in the report, Black and racialized employees at PCO describe its Corporate Services department as a key barrier to that Call to Action.

The PCO provided the Coalition with an update on the steps they have taken since this report was released internally. While its list of initiatives show some attempt to implement the report's recommendations, they lack the depth required to fully tackle the systemic issues identified, and there are still many key recommendations that have not been addressed.

City's respectful workplace policy remains in place, but will be reviewed

The City of Stratford's respectful workplace policy will be reviewed, but it will not be suspended – despite one councillor's push to do so.

Coun. Cody Sebben put forward a motion at the council meeting on July 22 to suspend policy number H.1.36, the respectful workplace policy, and to direct staff to provide options for a future review.

Sebben made that motion after three Stratford residents were suspended from city-owned property over alleged infractions to the respectful workplace policy during a February council meeting.

For three-months Barb Shaughnessy, Mike Sullivan, and Ken Wood were not allowed in council chambers and had to communicate with city staff through the city's solicitor. After Shaughnessy and Sullivan challenged the banning through David Donnelly of Donnelly Law, public discourse circulated around if such an action from the city was justified, with representatives from the city often saying it was an “operational” matter and an investigation found the three of them had acted against the policy.

That suspension was lifted on July 2. Ultimately, councillors largely found that the policy was integral to the work the city does, with some, like Coun. Larry McCabe, acknowledging that it had recently gone “awry.”