



Rely on **TDS**

Bullying and Harassment Can Lead to Unforeseen Consequences

By Scott Hoeppepner and Alex Leaver



201 Portage Ave, Suite 2200 | Winnipeg, Manitoba R3B 3L3 | 1-855-483-7529 | www.tdslaw.com

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It is common knowledge for employers that harmonious relations within the workplace are ideal for the health of both their businesses and their employees. As a result, situations of workplace bullying, harassment, and other dysfunctional conflicts between coworkers can be extremely detrimental. However, beyond the health and effectiveness of the workplace, there are legal obligations regarding bullying and harassment which ought not be forgotten.

For example, *The Human Rights Code* of Manitoba (the “Code”)¹ entitles employees to a workplace that is free from harassment, when that harassment is based on a protected characteristic. Further, the Code requires an employer to take reasonable steps to prevent that harassment from occurring. Similarly, *The Workplace Safety and Health Act* of Manitoba² mandates that employers provide a safe workplace that is free from harassment, requiring employers to have harassment policies in place which prohibit those behaviours.

However, the law regarding harassment and bullying is still expanding - underlining the need for employers to be active participants in identifying and eliminating harassment and bullying behaviour through properly conducted investigations and, where appropriate, issuing discipline and/or other remedial acts.

A recent example of this legal expansion occurred in a tragic case from Prince Edward Island (“PEI”), *Donovan v. QCRS*.³ In the *Donovan* decision, Eric Donovan was an employee of Queen’s County Residential Services (“QCRS”), who passed away at the age of 47 from cardiac arrest. Mr. Donovan’s family, however, believed that the cardiac arrest was the direct result of bullying that he had been subjected to at QCRS. This belief, in turn, led the family to claim Workers Compensation survivor benefits, arguing that Mr. Donovan’s death was tied to the workplace.

While the family’s claim was initially rejected by the PEI Workers Compensation Board, the PEI Court of Appeal concluded that the term “accident” in the applicable workers compensation legislation,⁴ could include workplace bullying. As a result, the Court of Appeal referred the matter back to the Workers Compensation Board in order to determine if there was a compensable claim.

According to a local media report, the PEI Workers Compensation Board was ultimately persuaded that there was sufficient evidence that the cardiac arrest of Mr. Donovan was the result of workplace bullying and harassment and consequently, awarded benefits.⁵

As a result, and in addition to being a striking example of the impact that bullying and harassment can have on an *individual*, the *Donovan* decision is illustrative of the ever expanding *legal* impact that bullying and harassment may have.

Although we’re unaware of any decisions in Manitoba where workplace bullying has resulted in a valid Workers Compensation claim, it would appear as though it’s only a matter of time before such a claim is accepted. For

¹ CCSM c H175.

² CCSM c W210.

³ *Donovan v QCRS*, 2016 PECA 1.

⁴ *Workers Compensation Act*, RSPEI 1988, c W-7.1

⁵ *P.E.I. widow awarded benefits after husband’s death linked to workplace bullying*, <http://www.cbc.ca/news/canada/prince-edward-island/pei-workplace-bullying-harassment-workers-compensation-board-lisa-eric-donovan-1.3959704>.

illustration, the Appeal Commission for Workers Compensation benefits in Manitoba has already commented that harassment may constitute an “accident” under *The Workers Compensation Act* of Manitoba⁶ in Decision #162/13:

The panel accepts that in certain circumstances, a pattern of either personal or sexual harassment may constitute an “accident” within the meaning of the Act. That finding may be made where there is willful and intentional conduct on the part of a third party which causes injury to the worker.⁷

Ultimately, while it is impossible to say how the *Donovan* decision will shape future cases, clearly a door has been opened which creates a potential expansion of employer liability for compensation and/or increased premiums for Workers Compensation benefits.

This expansion, in turn, continues to highlight the necessity for employers to ensure that proper and thorough investigations are conducted when allegations of bullying and harassment are made - not only to minimize legal liability but in order to bring such damaging behaviours to an end.

Scott is a partner at TDS LLP practising in labour and employment law; and also conducts workplace investigations. Scott is happy to assist with any needs you may have in these areas.

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ABOUT THE AUTHOR

⁶ C.C.S.M. c. W200

⁷ Decision #162/13 - Type: Workers Compensation, https://www.appeal.mb.ca/public-decisions/display_decision/2581

Scott Hoepner



Phone: 204.934.2355 | Email: sjh@tdslaw.com | Web:
www.tdslaw.com/sjh

Scott's practice is focused primarily on the area of labour and employment law and civil litigation. Scott has provided advice on employment and labour relations matters, terminations, wrongful dismissals, grievance arbitrations and proceedings before labour boards and human rights tribunals.

Scott also conducts workplace investigations, acting as an independent investigator for employers, regarding internal complaints of bullying, harassment or other policy violations.

Alex Leaver



Phone: 204.934.2442 | Email: ahl@tdslaw.com | Web:
www.tdslaw.com/ahl

Alex is a graduate of the University of Manitoba, receiving his J.D. in 2015.