Harassment Policies and Procedures: From Development to Implementation

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In recognition of its legal obligation to provide a harassment-free workplace, many employers have implemented formal policies and procedures specific to harassment in the workplace. A formal policy that addresses inappropriate conduct and sets out exactly how an incident or complaint will be handled has been deemed desirable for some time.

Recent developments within BC’s Workers Compensation scheme elevate formalized policies and procedures from sound practice to legal obligation.

WorkSafeBC’s Board of Directors has recently approved three new policies (D3-115-2, D3-116-1, D-117-2) on workplace bullying and harassment under ss. 115, 116, and 117 of the Workers Compensation Act, R.S.B.C. 1996, c.492 (the “Act”). These sections set out the general duties of employers, workers and supervisors, respectively.

All three policies, attached to this article as appendices together with the authorizing provisions of the Act, are effective November 1, 2013.

The policies define “bullying and harassment” as including any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause the worker to be humiliated or intimidated. Excluded from the definition is any reasonable action by any employer or supervisor relating to the management and direction of workers or the place of employment.
Policy D3-115-2, enacted under s. 115 of the Act, provides that reasonable steps for an employer to take to address the hazards of workplace bullying and harassment include the following:

- Not engaging in bullying and harassment;
- Developing a policy statement on bullying and harassment;
- Taking steps to prevent or minimize bullying and harassment;
- Developing and implementing procedures for reporting incidents and complaints;
- Developing and implementing procedures for dealing with incidents or complaints;
- Informing workers of the policy statement and steps taken to prevent bullying and harassment;
- Training workers and supervisors on recognizing the potential for bullying and harassment, responding, and procedures for reporting; and
- Annually reviewing the policy statement and procedures.

Employers’ duties also include addressing how the employer will deal with incidents or complaints, including:

- How and when investigations will be conducted;
- What will be included in the investigation;
- Roles and responsibilities of employers, supervisors, workers and others;
- Follow-up to the investigation; and
- Record keeping requirements.

With respect to workers, Policy D3-116-1 provides that a worker’s obligation to take reasonable care to protect the health and safety of themselves or others includes:

- Not engaging in bullying and harassment of other workers, supervisors, the employer or persons acting on behalf of the employer;
- Reporting if bullying and harassment is observed or experienced in the workplace; and
- Applying and complying with the employer’s policies and procedures on bullying and harassment.

Finally, pursuant to Policy D-117-2, a supervisor’s obligation to ensure the health and safety of workers includes:

- Not engaging in bullying and harassment of workers, other supervisors, the employer or persons acting on behalf of the employer; and
- Applying and complying with the employer’s policies and procedures on bullying and harassment.

BC is not the only province to require the implementation of a workplace harassment policy. Ontario has required employers to address harassment by way of a policy since 2009. However, Ontario’s *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 does not require employers to implement the policy through programs and procedures that address reporting of incidents, training of employees, etc. Such requirements are reserved for workplace violence.

BC’s more demanding regime requires employers to spell out policies and procedures that will be followed in response to each incident or complaint, but the content of both is left to employers and warrants some careful consideration.
I. Developing a Harassment Policy and Procedures

There are a number of practical, procedural and logistical matters to consider when developing a policy and procedures targeting bullying and harassment. The following are some of the key issues that should guide policy development.

A. Scope of Policy

The policy should spell out in the clearest possible terms what is meant by “bullying,” “harassment,” and other covered activities.

Many employees do not know that today’s harassment policies may, and under the amendments to the Act, must cover more than the traditional human rights types of discrimination and harassment. The wording of the policy should make it clear to an average worker that anything that may humiliate or intimidate another, from verbal aggression, swearing and yelling, to the spreading of malicious rumors, is covered by the policy.

The policy should also provide some indication of conduct that does not constitute either bullying or harassment, including the reasonable managerial and supervisory direction of work and workers.

A good harassment policy should address relevant third parties, most notably customers, suppliers and clients. Employees should be protected from third party bullying and harassment, but should also be subject to discipline for bullying and harassment directed towards such third parties.

B. Multiple Roads to Resolution

A formal policy for addressing bullying and harassment does not mean that every complaint requires an identical response. As in many other areas, proportionality is a sound principle to govern practice.

Proportionality can be achieved by setting out a complaints mechanism that allows for multiple stages and procedures, including more informal means of dealing with complaints that are less serious in nature. More informal measures are to be preferred where possible as they will be more efficient, less costly, less disruptive to the organization and the workforce, and more capable of rebuilding damaged relationships without causing further harm to the parties and the organization as a whole.

The policy can encourage employees, where appropriate, to communicate directly with the offending party and tell that party that their behavior is objectionable and contrary to workplace rules. However, employees must never be required to confront the other party. It is merely one option that employees may opt, and should be encouraged where appropriate, to take.

Mediation and other forms of informal resolution can also assist the parties where an apology, behavioral guidelines, counseling, workplace facilitation, training and other remedies are appropriate responses to the alleged misconduct.

C. Building in Procedural Safeguards

It is widely acknowledged that at common law employers are not required to provide employees with natural justice at work (see Knight v. Indian Head School Division No. 19 (1990), 69 D.L.R. (4th) 489 (S.C.C.); McIntyre v. Rogers Cable T.V. Ltd., [1996] 18 C.C.E.L. (2d) 116 (B.C.S.C.); Leach v. Canadian Blood Services, 2001 ABQB 54).

A recent Supreme Court of BC decision, Vernon v. British Columbia (Ministry of Housing and Social Development), 2012 BCSC 133, spells out the legal consequences of this in the context of a wrongful termination claim arising from allegations of bullying and harassment at para. 282:

If this was an administrative law case, the LDB’s decision to terminate Ms. Vernon would be quashed as a breach of natural justice. This is, however, not such a case. Although Ms. Vernon is a public sector employee, public law duties of procedural fairness do not apply.
2.2.4

Ms. Vernon’s relationship with the LDB is contractual. Her claim must be decided on the principles that govern all private law employment relationships: *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), 2008 SCC 9, [2008] 1 S.C.R. 190. Regardless of the flaws in the investigation, if the LDB had cause they were entitled to dismiss Ms. Vernon without notice.

The unionized workplace, on the other hand, is a far more procedurally developed environment. The collective agreement will set out discipline procedures and workers’ rights, including the right to union representation and disclosure.

Generally, an employee will have a right to union representation where there is a reasonable possibility of disciplinary action arising. Characterizing a meeting as “investigative” as opposed to disciplinary will not circumvent the collective agreement’s protections, especially where the facts reveal that the employer has decided that wrongdoing occurred (Flamboro Downs Ltd. v. Service Employees International Union, Local 2, BGPIWU (Max Grievance), [2010] OLAA No 206, 194 LAC (4th) 416 (Trachuk); Teck Coal Ltd. (Coal Mountain Operations) v. United Marine Workers of America, Local 7292 (Gentile Grievance), [2013] BCAA No 40 (McPhillips)).

The consequences of breaching the collective agreement’s procedural protections will turn on a number of contextual factors. However, generally, noncompliance is said to render discipline “voidable, but not necessarily void” (Re Hamilton Health Sciences and Ontario Nurses’ Association (2010), 194 L.A.C. (4th) 393 at para. 45 (Surdykowki)). In a recent BC case, Arbitrator McPhillips ruled that although the grievor was denied union representation when told that he would be suspended pending an investigation, timely and effective union advice would not have changed anything of substance in the circumstances (Teck Coal Ltd. at para. 59).

Whether or not an employer is unionized or whether a particular collective agreement’s representation and other procedural safeguards extend to investigations that are truly in the initial fact-finding stage, a good harassment policy should nonetheless set out an investigative process that provides some level of procedural fairness to employees, complainants and respondents alike. There is no doubt that courts and tribunals are influenced by an employer’s failure to adhere to basic principles of natural justice in the course of an investigation, especially when the allegations, and potential repercussions to an employee, are more serious in nature.

It is reasonably clear that, in the collective bargaining context, the failure to provide notice of allegations and a right to be heard may impede the employer’s ability to justify discipline or termination. The fact that at common law employers do not owe their employees a duty of procedural fairness does not mean that the failure to provide fair workplace procedures is without consequence. In the *Vernon* decision noted above, in which Justice Goepel of the Supreme Court of BC unequivocally stated that there is no duty of procedural fairness in this context, he also noted that a thorough and fair investigation would have revealed that the proper course of action was not termination of the plaintiff’s employment (*Vernon* at para. 347).

Failure to provide procedural fairness in the course of an investigation may also lead to costly damages against the employer. This possibility was acknowledged by the Supreme Court of BC in *van Woerkens v. Marriott Hotels of Canada Ltd.*, 2009 BCSC 7 at para. 152, relying on *Honda Canada Inc. v. Keays*, 2008 SCC 39:

An employer who fails to investigate the validity of allegations against an employee, and as a result is unable to establish cause, runs a further risk. *If the employer draws unfounded conclusions damaging to an employee’s reputation without affording the employee any opportunity to answer those allegations, it exposes itself to a claim for damages for breach of its obligation of fair dealing in the manner of termination of the employment contract* … (emphasis added).

In *Elgert v. Home Hardware Stores Ltd.*, 2011 ABCA 112, the Alberta Court of Appeal made it clear that although the law does not require that an investigation be carried out in a specific manner, courts will not turn a blind eye to serious investigative flaws (at paras. 88-89):

When evaluating the employer’s conduct in the context of punitive or aggravated damages, it is important to acknowledge that an employer cannot be faulted for honestly believing an allegation of sexual harassment (or any other wrongdoing) and should not be punished simply because an investigation was clumsy or a jury subsequently concludes that the allegation was not substantiated. An employer is entitled, indeed sometimes required, to make decisions to suspend or terminate employees (even if a court subsequently disagrees
with its assessment) without being subject to a claim for punitive or aggravated damages. Employers must take seriously allegations of sexual harassment. There is no specific standard of investigation that employers must follow; what is required will vary depending on the facts surrounding the employer, its policies, sophistication, experience and the workplace. Courts must not require such a high standard of investigation that there is a chilling effect on employers’ manner of dealing with allegations of sexual harassment.

Nevertheless, how the employer reacts is subject to judicial scrutiny. Its responsibilities do not give it licence to conduct an inept or unfair investigation or behave in malicious, vindictive, or outrageous ways … (emphasis added)

Interestingly, the trial judge in Elgert had permitted the parties to enter in expert evidence on investigative protocols in the context of harassment allegations. The Court of Appeal did not take issue with such evidence, noting that it may have helped the jury identify some of the problem areas that should be considered when dealing with termination for sexual harassment.

Thus, building procedural fairness into harassment policies and procedures offers protection to both employers and employees.

**D. Extent of Union’s Involvement**

Employers should also consider involving the union when developing harassment policy and procedures. Likewise, unions should consider being proactive in attempting to persuade employers to adopt appropriate policies and in participating in their development.

Addressing the issue together may take more effort, but there is no doubt that both parties have an interest in addressing bullying harassment in the workplace. This much was acknowledged in Warner Bros. Television (B.C.) Inc. (Supernatural 5 Films Inc.) v. British Columbia and Yukon Council of Film Unions (Widas Grievance), [2012] BCCAAA No 145 (Fleming), at para. 100:

> Before engaging in the exercise described above to deal with the conflicts in the evidence in respect to the remaining allegations of misconduct against the Grievor, I note that while the Employer has a legal obligation to ensure a workplace free from harassment, both the Employer and the Union, at the very least, share an interest in that same objective. Harassment allegations have the potential to create considerable division and emotional turmoil in a workplace and can place a union in a difficult position where there are competing or even conflicting interests at play between respondents and complainants in the bargaining unit. In recognition of that, as well as of the shared interest in both parties ensuring a workplace free from harassment, some unions and employers have developed specialized joint dispute resolution processes to deal with these types of issues. However, these parties have not done so to date.

The above statements highlight another important matter that both parties should be clear on. Providing a harassment-free work environment is the employer’s responsibility and employer’s only. The union should never agree to language or procedures that suggest joint responsibility. It simply does not have sufficient control of too many factors to take on such an obligation and potential liability.

The benefits of a jointly created policy and procedures are fairly obvious. The union’s involvement is likely to have a legitimizing effect in the eyes of employees. The union may also be able to press for a policy that provides broader protection for employees, complainants and respondents alike. One example, already noted above, is ensuring that employees are protected from harassment by third parties such as customers.

Interestingly, the union’s involvement may in certain circumstances insulate the employer from allegations that it carried out a flawed investigation. In Nestle Canada Inc. v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-CANADA), Local 252 (Mohabir Grievance), [2011] OLAA No 311 (Stout), the union accused the employer of carrying out a “fatally flawed” harassment investigation. Arbitrator Stout acknowledged that the investigation was not perfect but indicated that this was not fatal because the union and the company had jointly conducted the investigation pursuant to the jointly created policy.
II. Carrying Out an Investigation

To understand what else a harassment policy needs to address, it is useful to review issues that are likely to arise in the course of an investigation.

A. Nature of Complaint

An employer may get wind of conduct or actions that are inconsistent with its policies or the law in numerous ways. Anonymous, rumour-based, “confidential” and other forms of non-traditional complaints raise both logistical and procedural fairness concerns for employers.

While individual harassment policies may require that harassment complaints be formalized in the form of a written complaint, it is fairly clear that employer has a duty to act upon receiving information, in whatever form, about conduct that may be inconsistent with policy and/or law.

The Human Rights Tribunal of Ontario has held that an employer was obligated to act when it received verbal communications about sexual harassment in the workplace (Harriot v. National Money Mart (2010), HRTO 353).

In Disotell v. Kraft Canada Inc., 2010 ONSC 3793, a Kraft employee claimed summary dismissal after a shift-supervisor failed to report and act on multiple verbal complaints of ongoing harassment by co-workers. Although the plaintiff claimed constructive dismissal, the evidence disclosed that he had not approached management before taking short-term disability leave for depression and anxiety. The employer’s subsequent inquiry relied on the words of the supervisor as to what had occurred between the parties. The Ontario Court held that the plaintiff’s failure to re-ach out to management did not relieve the employer of its duty to investigate all allegations of harassment. The employer was precluded from arguing that the plaintiff had failed to provide sufficient particulars of harassment when the employer’s inadequate internal investigation revealed that it had no intention of being “pro-active” in relation to the complaints and its own harassment policy.

However, an employer should be particularly concerned about accusing individuals of wrongful conduct when information related to harassment allegations is limited.

Departmental reviews and employee surveys are viable alternatives to more pointed investigations when lacking sufficient information. These options entail interviewing or surveying all members of the team or department out of which the concern arose and asking all employees the same generic questions. Another approach for drawing out information is a “360 degree review” of the individual identified in a complaint (Christine Thomlinson, Rubin Thomlinson, and Arleen Huggins, “Investigating Allegations of Harassment and Workplace Violence: Practical Considerations” (presented at Duty to Accommodate: Making the Toughest Calls, June 12-13, 2012) [unpublished]).

B. Determining Who Should Investigate

Determining who should investigate is one of the most important decisions to be made when an incident or complaint arises.

There is no doubt that, whether external or internal to the organization, investigators must approach an investigation objectively.

Although the law does not stipulate circumstances in which an external investigator might be required, courts have noted the problematic nature of in-house investigations, including in Disotell at para. 95:

The H.R. investigation, in my opinion, demonstrates the inherent difficulty of in-house investigations between employees of longstanding relationships, especially when there are conflicting reports between supervisory and first level employees. Kraft has clearly invested much time and effort in creating and disseminating a zero tolerance harassment policy. That policy however is only as effective as the individuals who administer it.
Ideally an investigator is a neutral third-party not influenced by the employer’s views and theories of the matter.

In addition to objectivity, an investigator should have the expertise to carry out an inquiry, including knowledge of applicable law and policy. Sufficient investigative skills are also not negotiable.

While an investigator must have credibility sufficient to ensure that recommendations are taken seriously by the employer and acted upon, an investigator’s report can never be final and binding on the matter. The employer cannot abdicate its duty to manage the employees, deal with disputes and discipline appropriately.

C. Scope of Investigation

In addition to determining who will investigate, the scope or mandate of the investigation is another decision that requires some thought and may have many consequences down the road.

As noted by other authors, the actual terms of reference or retainer authorizing an investigation are crucial to questions of legal privilege over the investigative report (Kelly J. Harbridge, “Workplace Investigations: A Management Perspective” (Paper presented to the Canadian Bar Association 2011 National Administrative Law, Labour and Employment Conference, November 25-26, 2011), [unpublished]; Thomlinson et al., supra).

But in terms of actually carrying out an investigation, the scope of inquiry is the roadmap against which every exchange and action will be judged and should be clear to the parties involved. The nature of allegations, identity of the parties and other contextual factors will be most relevant in determining the scope or mandate of the investigation.

However, it is important to be mindful of the “spigots opening” effect that investigations often have on a workplace. Inquiries into specific instances of bullying and harassment can reveal allegations and concerns going back a number of years. While the scope of investigation might need to be amended as the investigation progresses, fairness and prejudice to the respondents are not to be overlooked.

In Warner Bros. Television, referenced above, the investigation into a supervisor’s alleged bullying and intimidation brought to light a number of earlier incidents, dating years back and involving other employees. Arbitrator Fleming acknowledged that the grievor’s subordinates were reluctant to report the intimidation they experienced because of the grievor’s reputation and good relationship with management. Nonetheless, he ruled that those incidents that were not at the time they occurred brought to grievor’s or employer’s attention could not be relied on in alleging just cause for termination. However, they could be cited to corroborate more recent events that were within the scope of the inquiry.

In Nestle Canada Inc., also noted above, evidence of what occurred years before between the grievor and one of the complainants was relevant and admissible, although subject to argument about what weight could properly be afforded to such evidence. Moreover, the collective agreement’s sunset clause did not preclude the employer from tendering evidence of alleged misconduct from an earlier period because the employer had no knowledge of and had never disciplined the grievor for those incidents.

D. Timing of Investigation

While ideally investigations should be as expeditious as possible, delays may be justified for a number of reasons, including when issues related to process (e.g., requests for particulars, production, etc.) are raised by employees, the union or counsel.

An investigatory timeframe may also be affected by the “spigots opening” effect discussed above. Additional complaints and counter-complaints are likely to slow down the investigation but cannot simply be ignored.

Accusations of investigatory delay will be easier to defend down the road if fairness to the parties is the determining factor in the investigative timeframe.
E. **Procedural Safeguards in Practice**

The case for building in procedural safeguards had already been argued but it is helpful to address what such safeguards mean in practice.

Most fundamental are the rights of the accused employee, including the right to know the identity of the complainant, to receive particulars of the complaint and to respond to those particulars. The employee should be confronted with allegations against him or her at earliest possible opportunity and provided with opportunity to respond. Particulars of the complaint should be sufficiently detailed to allow a meaningful response and any further details revealed in the course of the investigation should also be put to the respondent.

Privacy and confidentiality is a concern when carrying out any workplace investigation. Absolute confidentiality can never be achieved and should never be promised. Information about allegations and people involved should be shared on a need to know basis only. Confidentiality obligations and limitations should be carefully explained to everyone involved, including the complainant, the respondent, any witnesses, and managers involved. Penalties for breaching confidentiality should be included within the policy and enforced in appropriate cases. Unnecessarily impinging on parties’ privacy and confidentiality is a risk that can be minimized with careful planning and consideration of each communication and interview. Interview questions, for example, should be planned in advance and will ideally allow the investigator to obtain information from witness without divulging unnecessary information (Thomlinson et al., supra).

Investigator should interview all involved individuals and anyone else who may be aware of the events. Direct parties should be asked if there is anyone they want to have interviewed.

F. **Investigation Materials and Reports**

The policy should set out who will be entitled to receive a copy of the investigator’s report. Sometimes only an executive summary, or a version redacted to protect witnesses, is provided to the complainant and respondent.

As stated above, the employer should retain ultimate responsibility to determine the consequences of the investigation. The results of the investigation should be communicated to the parties involved at earliest opportunity. Broader communication may be required when issue addressed involves poisoned workplace allegations or systemic workplace issues.

Should discipline be imposed, the person disciplined may challenge that discipline, by way of grievance in the unionized environment, and by civil suit in the non-unionized sector.

In either context issues may arise with respect to whether the full investigation report and investigator’s materials can or must be disclosed and the use, if any, which can be made of them in future legal proceedings. Privilege over investigative materials is often difficult to establish.

In United Food and Commercial Workers Union v. Weetabix of Canada Limited, [2012] OLAA No. 257 (Brown), the arbitrator ruled that litigation privilege did not attach to witness statements and notes of witness interviews created before the decision to terminate the grievor. Arbitrator Richard Brown confirmed that at a point when the employer does not know whether misconduct has occurred there can be no reasonable expectation of litigation; all materials gathered in coming to the final decision regarding termination are not for the “dominant purpose” of litigation.

In Ontario Nurses’ Association v. North Bay General Hospital, [2011] OLAA No. 506 (Parmar), the employer was ordered to produce the report of a lawyer retained to investigate a harassment complaint. The arbitrator ruled that although the individual was a lawyer, solicitor-client privilege did not apply because the lawyer acted in this case as an investigator and not a lawyer. As noted above, the actual investigative terms of reference or retainer will be scrutinized to address any claim of privilege over investigative materials.
III. Recent Cautionary Tales

Two recent employment cases illustrate the damage that can be caused when an employer attempts to address a harassment complaint without taking into account some of the basic principles discussed herein. There is no doubt that in both cases many of the investigative mistakes could have been prevented had the investigation been controlled and guided by a policy sensitive to many of the issues outlined above.

In *Vernon*, referred to above, the Court indicated that a thorough and fair investigation would have revealed that alternatives short of termination were the proper course of action. It held that the employer did not have grounds to summarily dismiss the plaintiff and awarded 18 months’ pay in lieu of notice, $35,000 in aggravated damages, and $50,000 in punitive damages.

The plaintiff was a 30-year employee of the Province’s Liquor Distribution Branch and a store manager for 12 of those years. She had a glowing performance record and no prior history of complaints. The complainant, a subordinate of the plaintiff, alleged that plaintiff’s managerial style constituted harassment. Investigation revealed a number of subordinates who were also dissatisfied with plaintiff’s managerial style. The plaintiff was widely known in the organization as a tough and demanding store manager.

The Court identified the following problems with the investigation carried out by the employer’s human resources department:

- Internal investigation was carried out by plaintiff’s labour relations advisor. The same advisor had given the plaintiff advice about dealing with the complainant.
- Investigator appeared convinced of plaintiff’s wrongdoing and compiled interview list on the basis of such belief.
- Witness interviews were not carried out in an impartial manner—those who defended the plaintiff were accused of lying.
- Investigator failed to interview employees named as witnesses to key events by both complainant and the plaintiff.
- Investigator’s recommendation memo failed to report on investigation findings in objective matter; instead it set out to establish the plaintiff’s guilt.
- Investigator’s problematic and erroneous findings were relied on by management without further inquiry.
- Management rushed to judgment and failed to step back and put allegations in context.

Despite the Court’s dissatisfaction with the investigation, it held that the unfair investigation did not give rise to aggravated damages. The aggravated damages claim was based on the insensitive manner in which the termination of the plaintiff’s employment was handled. Punitive damages were awarded because the Court judged the employer’s offer of a reference letter conditional on the plaintiff’s resignation a reprehensible act, one that departed to a marked degree from ordinary standards of decent behavior.

In *Elgert*, also noted above, the jury awarded the plaintiff 24 months’ salary in lieu of reasonable notice, $60,000 for defamation, $200,000 for aggravated damages and $300,000 for punitive damages.

The Court of Appeal determined that there was sufficient evidence to support the trial judge’s decision to leave aggravated and punitive damages with the jury, including the employer’s lack of neutrality in dealing with the matter (complainant’s father was part of the employer’s organization and had some initial involvement with the investigation, his friend was sent to investigate) and its failure to conduct an appropriately broad investigation that took account evidence of the complainant’s possible motives against the plaintiff. Also noted was the employer’s conduct of a meeting at which the plaintiff was told of the accusations against him but not given any particulars, even when he “begged” for the information.
In the course of its review of the jury award, the Court of Appeal identified a number of problems with the employer’s investigation:

- Internal investigator did not approach matter objectively and had no training or experience in investigations;
- Plaintiff was not given particulars in the course of the initial interview;
- Investigator failed to interview individuals who could speak to the relationship between the plaintiff and the complainant; and
- Employer never considered motive or the possibility of fabrication on the part of the complainant.

The Court of Appeal upheld the notice period and the defamation damages, but set aside the aggravated damages because there was no evidence at trial of actual damages suffered by the plaintiff as a result of the manner of his termination. Punitive damages were reduced to $75,000.

IV. Conclusion

Developing and implementing effective workplace bullying and harassment policies and procedures requires an employer and other involved parties to take the time and consider how the issues discussed herein apply to each specific work environment.

While there is no “one size fits all” approach, policies and procedures that recognize a number of basic principles, including fairness to the respondent employee, should ensure that an employer satisfies its obligation to provide a harassment free work environment without exposing itself and its employees to harmful investigative practices that may further aggravate workplace relationships.
V. Appendix A—WorkSafeBC Policies on Workplace Bullying and Harassment

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Employer Duties – Workplace Bullying and Harassment – D3-115-2
Worker Duties – Workplace Bullying and Harassment – D3-116-1
Supervisor Duties – Workplace Bullying and Harassment D3-117-2

WHEREAS:

Pursuant to section 82 of the Workers Compensation Act, RSBC 1996, Chapter 492 and amendments thereto ("Act"), the Board of Directors ("BOD") must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The former Minister of Labour, Citizens’ Services and Open Government announced WorkSafeBC would develop policy on workplace bullying and harassment and consult with stakeholders;

AND WHEREAS:

Sections 115, 116 and 117 of the Workers Compensation Act set out the general duties of employers, workers and supervisors respectively;

AND WHEREAS:

Policies have been developed to clarify the obligations of employers, workers and supervisors regarding preventing, where possible, or otherwise minimizing bullying and harassment in the workplace;

AND WHEREAS:

The Policy and Regulation Division has consulted with stakeholders on these policies.
THE BOARD OF DIRECTORS RESOLVES THAT:

1. The Policy statements in D3-115-2, D3-116-1, and D3-117-2 are approved as set out in Appendices A, B and C of this resolution.

2. The amendments made by this resolution are effective November 1, 2013.

3. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, March 20, 2013.

By the Workers' Compensation Board

GEORGE MORFIT, FCA
CHAIR, BOARD OF DIRECTORS
BACKGROUND

1. Preamble

An employer has a duty to ensure the health and safety of its workers, and as a result, employers must take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Workplace bullying and harassment can lead to injury, illness or death.

This Policy provides a consistent legal framework for stakeholders, WorkSafeBC Officers and decision-makers identifying what WorkSafeBC considers to be reasonable steps for an employer to prevent where possible, or otherwise minimize, workplace bullying and harassment.

WorkSafeBC Officers will review whether the elements in this Policy have been developed, implemented and periodically reviewed.

2. Explanatory Notes

Section 115(1)(a) of the Workers Compensation Act ("Act") requires an employer to take all reasonable steps in the circumstances to ensure the health and safety of its workers.

Section 115(2)(e) of the Act requires an employer to inform, instruct, train and supervise workers to ensure their safety and those of other workers.

This policy (D3-115-2), which flows from the above sections in the Act, discusses employer duties regarding bullying and harassment. It identifies what WorkSafeBC considers to be reasonable steps for an employer to take to address the hazards of workplace bullying and harassment.

There are two other related policies that address workplace bullying and harassment which are Policy D3-116-1, Worker duties, and Policy D3-117-2, Supervisor duties.
3. The Act

Section 115(1)(a) & Section 115(2)(e):

(1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer’s work is being carried out.

(2) Without limiting subsection (1), an employer must

(e) provide to the employer’s workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work.

POLICY

Definition

“bullying and harassment” (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

Reasonable Steps to Address the Hazard

WorkSafeBC considers that reasonable steps by an employer to prevent where possible, or otherwise minimize, workplace bullying and harassment include the following:

(a) developing a policy statement with respect to workplace bullying and harassment not being acceptable or tolerated;

(b) taking steps to prevent where possible, or otherwise minimize, workplace bullying and harassment;
(c) developing and implementing procedures for workers to report incidents or complaints of workplace bullying and harassment including how, when and to whom a worker should report incidents or complaints. Included must be procedures for a worker to report if the employer, supervisor or person acting on behalf of the employer, is the alleged bully and harasser;

(d) developing and implementing procedures for how the employer will deal with incidents or complaints of workplace bullying and harassment including:

i. how and when investigations will be conducted;
ii. what will be included in the investigation;
iii. roles and responsibilities of employers, supervisors, workers and others;
iv. follow-up to the investigation (description of corrective actions, timeframe, dealing with adverse symptoms, etc.); and
v. record keeping requirements;

(e) informing workers of the policy statement in (a) and the steps taken in (b);

(f) training supervisors and workers on:

i. recognizing the potential for bullying and harassment;
ii. responding to bullying and harassment; and
iii. procedures for reporting, and how the employer will deal with incidents or complaints of bullying and harassment in (c) and (d) respectively;

(g) annually reviewing (a), (b), (c), and (d);

(h) not engaging in bullying and harassment of workers and supervisors; and

(i) applying and complying with the employer’s policies and procedures on bullying and harassment.

PRACTICE

The definition of bullying and harassment includes any inappropriate conduct or comment by a ‘person’ towards a worker that the ‘person’ knew or reasonably ought to have known would cause that worker to be humiliated or intimidated.

A ‘person’ includes any individual, whether or not they are a workplace party. This means that a ‘person’ could be a workplace party such as an employer, supervisor, or
co-worker, or a non workplace party such as a member of the public, a client, or anyone a worker comes into contact with at the workplace.

In order to determine what is reasonable in the policy, a definition below is included for a ‘reasonable person’.

Black’s Law Dictionary, Ninth Edition defines a reasonable person as follows:

"...a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others’ interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions..."
BACKGROUND

1. Preamble

A worker has a duty to take reasonable care to protect the health and safety of themselves and other persons, and as a result, a worker must take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Workplace bullying and harassment can lead to injury, illness or death.

This Policy provides a consistent legal framework for stakeholders, WorkSafeBC Officers and decision-makers identifying what WorkSafeBC considers to be reasonable steps for a worker to prevent where possible, or otherwise minimize, workplace bullying and harassment.

2. Explanatory Notes

Section 116(1)(a) of the Workers Compensation Act ("Act") requires workers to take reasonable care to protect the health and safety of other persons who may be affected by the worker's acts or omissions at work.

This policy (D3-116-1), which flows from the above section in the Act, discusses worker duties regarding bullying and harassment.

There are two other related policies that address workplace bullying and harassment which are Policy D3-115-2, Employer duties, and Policy D3-117-2, Supervisor duties.
3. The Act

Section 116

(1) Every worker must

(a) take reasonable care to protect the worker’s health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work.

POLICY

Definition

"bullying and harassment" (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

A worker’s obligation to take reasonable care to protect the health and safety of themselves or others includes:

(a) not engaging in bullying and harassment of other workers, supervisors, the employer or persons acting on behalf of the employer;

(b) reporting if bullying and harassment is observed or experienced in the workplace; and

(c) applying and complying with the employer's policies and procedures on bullying and harassment.

PRACTICE

The definition of bullying and harassment includes any inappropriate conduct or comment by a ‘person’ towards a worker that the ‘person’ knew or reasonably ought to have known would cause that worker to be humiliated or intimidated.

A ‘person’ includes any individual, whether or not they are a workplace party. This means that a ‘person’ could be a workplace party such as an employer, supervisor, or
co-worker, or a non workplace party such as a member of the public, a client, or anyone a worker comes into contact with at the workplace.

Black’s Law Dictionary, Ninth Edition defines a reasonable person as follows:

"...a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions..."
RE: Supervisor Duties - Workplace Bullying and Harassment

BACKGROUND

1. Preamble

A supervisor has a duty to take all reasonable steps to ensure the health and safety of workers under their supervision, and as a result, a supervisor must take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Workplace bullying and harassment can lead to injury, illness or death.

This Policy provides a consistent legal framework for stakeholders, WorkSafeBC Officers and decision-makers identifying what WorkSafeBC considers to be reasonable steps for a supervisor to prevent where possible, or otherwise minimize, workplace bullying and harassment.

2. Explanatory Notes

Section 117(1)(a) of the Workers Compensation Act ("Act") requires supervisors to take all reasonable steps to ensure the health and safety of workers under their supervision.

This policy (D3-117-2), which flows from the above section in the Act, discusses supervisor duties regarding bullying and harassment. There are two other related policies that address workplace bullying and harassment which are Policy D3-115-2, Employer duties, and Policy D3-116-1, Worker duties.
3. The Act

Section 117

(1) Every supervisor must

(a) ensure the health and safety of all workers under the direct supervision of the supervisor....

POLICY

Definition

"bullying and harassment" (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

A supervisor’s obligation to ensure health and safety of workers includes:

(a) not engaging in bullying and harassment of workers, other supervisors, the employer or persons acting on behalf of the employer; and

(b) applying and complying with the employer’s policies and procedures on bullying and harassment.

PRACTICE

The definition of bullying and harassment includes any inappropriate conduct or comment by a ‘person’ towards a worker that the ‘person’ knew or reasonably ought to have known would cause that worker to be humiliated or intimidated.

A ‘person’ includes any individual, whether or not they are a workplace party. This means that a ‘person’ could be a workplace party such as an employer, supervisor, or co-worker, or a non-workplace party such as a member of the public, a client, or anyone a worker comes into contact with at the workplace.
Black's Law Dictionary, Ninth Edition defines a reasonable person as follows:

"...a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others’ interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions..."

EFFECTIVE DATE: November 1, 2013

AUTHORITY: s 117(1)(a) of the Workers Compensation Act

HISTORY:

APPLICATION:
VI. Appendix B—Workers Compensation Act: Selected Excerpts

Workers Compensation Act
[RSBC 1996] CHAPTER 492

Part 3 — Occupational Health and Safety
Division 1 — Interpretation and Purposes
Definitions
106 In this Part and in the regulations under this Part:

“employer” means
(a) an employer as defined in section 1,
(b) a person who is deemed to be an employer under Part 1 or the regulations under that Part, and
(c) the owner and the master of a fishing vessel for which there is crew to whom Part 1 applies as if the crew were workers,

but does not include a person exempted from the application of this Part by order of the Board;

Division 3 — General Duties of Employers, Workers and Others
General duties of employers
115 (1) Every employer must
(a) ensure the health and safety of
(i) all workers working for that employer, and
(ii) any other workers present at a workplace at which that employer's work is being carried out, and
(b) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must
(a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,
(b) ensure that the employer's workers
(i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,
(ii) comply with this Part, the regulations and any applicable orders, and
(iii) are made aware of their rights and duties under this Part and the regulations,
(c) establish occupational health and safety policies and programs in accordance with the regulations,
(d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,
(e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,
(f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,
(g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and
(h) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

General duties of workers

116 (1) Every worker must
(a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work, and
(b) comply with this Part, the regulations and any applicable orders.
(2) Without limiting subsection (1), a worker must
(a) carry out his or her work in accordance with established safe work procedures as required by this Part and the regulations,
(b) use or wear protective equipment, devices and clothing as required by the regulations,
(c) not engage in horseplay or similar conduct that may endanger the worker or any other person,
(d) ensure that the worker's ability to work without risk to his or her health or safety, or to the health or safety of any other person, is not impaired by alcohol, drugs or other causes,
(e) report to the supervisor or employer
(i) any contravention of this Part, the regulations or an applicable order of which the worker is aware, and
(ii) the absence of or defect in any protective equipment, device or clothing, or the existence of any other hazard, that the worker considers is likely to endanger the worker or any other person,
(f) cooperate with the joint committee or worker health and safety representative for the workplace, and
(g) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

General duties of supervisors

117 (1) Every supervisor must
(a) ensure the health and safety of all workers under the direct supervision of the supervisor,
(b) be knowledgeable about this Part and those regulations applicable to the work being supervised, and
(c) comply with this Part, the regulations and any applicable orders.
(2) Without limiting subsection (1), a supervisor must
(a) ensure that the workers under his or her direct supervision
(i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and
(ii) comply with this Part, the regulations and any applicable orders,
(b) consult and cooperate with the joint committee or worker health and safety representative for the workplace, and
(c) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.