

MFL

Psychological Harassment and Bullying in Manitoba Workplaces

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Personal/Psychological Harassment and Bullying in Manitoba Workplaces

Personal or psychological harassment and bullying is a very serious problem and issue that negatively affects Manitoba workers and their workplaces everyday. All too often it is not given the proper attention by employers, supervisors, government institutions and workers themselves because it is deemed to be a ‘personal’ problem. The results of not giving proper time, attention and care to this rampant workplace issue are often devastating. Personal/psychological harassment and bullying strikes at the heart of an individual’s dignity and self-respect, which in turn can mean that they are not able to fully participate with their workplace, family or community. Harassment and bullying takes many different forms depending on the individuals and the workplace involved.

As stated by the World Health Organization in its 2003 publication entitled *Raising Awareness of Psychological Harassment at Work*:

“Psychological harassment is a form of employee abuse arising from unethical behaviour and leading to victimization of the worker. It is an increasing worldwide problem which is still largely unknown and underestimated. It can produce serious negative consequences on the quality of life and on the individuals’ health, mainly in the

emotional psychosomatic and behavioural areas. In addition, society as a whole becomes a victim because of increased pressure on social services and welfare.”¹

The great province of Manitoba is no exception to this experience. “Priest accused of bullying hospital chaplains” proclaims a recent headline in the Winnipeg Free Press.² Indeed, between 30 and 50 per cent of workers say they've experienced workplace bullying.³ But what exactly is psychological harassment or bullying?

Expressed in its most simplistic form, harassment can be defined as any action (verbal, psychological or physical) on a single or repeated basis which humiliates, insults or degrades and is known or ought reasonably to be known to be unwelcome by the victim of the harassment.⁴ Obviously many types of harassment exist. These include, but are not limited to: bullying, psychological harassment, racial harassment, religious harassment, sexual harassment, stalking, mobbing, hazing, cyber harassment, work or employee abuse, mistreatment, emotional abuse, bossing, victimization, intimidation, psychological terrorization and violence.

Thus far Manitoba has only legislatively dealt with harassment that is ‘characteristic’ based. That means harassment that is based on an identifiable characteristic of a person, such as race, creed, religion, colour, sex etc...Both the Manitoba Human Rights Code and the Workplace safety and Health regulations deal with and strictly prohibit this form

¹ http://www.who.int/occupational_health/publications/en/pwh4e.pdf

² <http://www.winnipegfreepress.com/local/top-chaplain-denies-abusing-staff-65891812.html>

³ <http://www.winnipegfreepress.com/historic/32755729.html>

⁴ United Steelworkers Anti-Harassment Policy 2007

of harassment. Unfortunately, a real lack of protection still exists for Manitoba workers because we currently have no legislative protection from harassment that is not based on one of the prescribed characteristics. Therefore workers who are humiliated, bullied, undermined, and threatened have no recourse or legislative protection.

The Manitoba Human Rights Commission identified 150 inquiries of this nature last year alone.⁵ Because these complaints of harassment were not based on ‘characteristics’, nothing could be done to help them with their problem.

The effects of personal/psychological harassment and bullying can be devastating. Anxiety reactions, insomnia, irritability, social isolation, ulcers, dermatitis, depression, heart disease, nightmares, aggressive behaviours, hypertension, asthma, joint and muscle pains, hair loss, sexual dysfunctions, eating disorders, increased alcohol, smoking and drug intake, suicide and violent retaliation are not uncommon reactions to this type of harassment.⁶

So exactly who are bullies? Bullies want to control one individual or a group of individuals. According to the Workplace Bullying and Trauma Institute, half of all bullies are women. Women bullies target women 84 per cent of the time; male bullies target women 69 per cent of the time, making women the majority of targets in the workplace. The majority of bullies (81 per cent) are bosses; less often they are coworkers.⁷

⁵ Information provided by Diana Scarth of the MHRC. October 29th, 2009.

⁶ http://www.who.int/occupational_health/publications/en/pwh4e.pdf

⁷ http://www.usw.ca/UserFiles/File/WOMEN/Violence%20Prevent_ENG.pdf

This problem needs immediate attention. Therefore the Manitoba Federation of Labour is calling on the provincial government of Manitoba to solve this problem by enacting long overdue legislative protection for all Manitoba workers. This can be accomplished by expanding the definition of harassment currently included in the Workplace Safety and Health regulations (217/2006) to include harassment that is not characteristic based. This non-characteristic based harassment or personal/psychological harassment and bullying is repeated, unreasonable behaviour directed towards an employee, or group of employees, that creates a risk to health and safety.⁸

It is time for the province of Manitoba to step into line with other provinces throughout Canada and other jurisdictions throughout the world that have recognized the need for legislative protections against personal/psychological harassment and bullying.

In 2008 the Minister's Advisory Council on Workplace Safety and Health set about the work that is mandated by The Workplace Safety and Health Act: W210

Review every five years

[16\(3\)](#) At least once every five years, the council shall review this Act and its administration and report its findings and recommendations, if any, to the minister.

This particular section of the W210 was introduced by then Premier Gary Doer's government in 2002 and as such was the first time that the Advisory Council had been convened. This Council was comprised of equal representation of workers, professionals and employers. On December 8th, 2008 the Council made a unanimous recommendation on changes to the W210 that they all deemed to be of great importance.

⁸ Definition provided by European Agency for Safety and Health at Work (2002)

At a meeting of the Advisory Council on February 27th, 2009 the Minister of Labour (Nancy Allen) responded. The Minister accepted all of the Advisory Councils recommendations for change to the Act except for one. This was the recommendation that there be an expansion of the definition of the term Harassment to include psychological harassment and bullying. The Ministers response to this particular point was:

“Council’s recommendation regarding the inclusion of ‘psychological harassment’ under the current harassment regulation represents a fundamental change to the regulation that was just implemented in 2007. I have asked WSH staff to work with the Council to review the existing harassment provisions in Manitoba, those in place in other jurisdictions, and the implications of significantly expanding the Manitoba requirements.”

By the accounts of the Labour representatives (Rob Hilliard UFCW 832, Steve Edwards CUPE, and Blaine Duncan MGEU) this work has already been completed. Apparently there was even a sub-committee that looked into the comparative legislation.⁹

The aforementioned WSH regulation that was enacted in 2007 states as a definition of the word harassment:

“harassment” means any objectionable conduct, comment or display by a person that:

- (a) is directed at a worker in a workplace;
- (b) is made on the basis of race, creed, religion, colour, sex, sexual orientation, gender determined characteristics, political belief, political association or political activity, marital status, family status, source of income, disability, physical size or weight, age, nationality, ancestry or place of origin; and
- (c) creates a risk to the health of the worker.

⁹ Correspondence with Rob Hilliard September 09

Part 10 of the WSH Regulations states:

**PART 10
HARASSMENT**

Harassment prevention policy

10.1(1) An employer must

- (a) develop and implement a written policy to prevent harassment in the workplace; and
- (b) ensure that workers comply with the harassment prevention policy.

10.1(2) The harassment prevention policy must be developed in consultation with

- (a) the committee at the workplace;
- (b) the representative at the workplace; or
- (c) when there is no committee or representative, the workers at the workplace.

Required statements

10.2(1) The harassment prevention policy must include the following statements:

- (a) every worker is entitled to work free of harassment;
- (b) the employer must ensure, so far as is reasonably practicable, that no worker is subjected to harassment in the workplace;
- (c) the employer will take corrective action respecting any person under the employer's direction who subjects a worker to harassment;
- (d) the employer will not disclose the name of a complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is
 - (i) necessary to investigate the complaint or take corrective action with respect to the complaint, or
 - (ii) required by law;
- (e) a worker has the right to file a complaint with the Manitoba Human Rights Commission;
- (f) the employer's harassment prevention policy is not intended to discourage or prevent the complainant from exercising any other legal rights pursuant to any other law.

10.2(2) The harassment prevention policy must provide information on the following procedures under the policy:

- (a) how to make a harassment complaint;
- (b) how a harassment complaint will be investigated;
- (c) how the complainant and alleged harasser will be informed of the results of the investigation.

Posting policy

10.3 An employer must post a copy of the harassment prevention policy in a conspicuous place at the workplace.

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We believe that it is useful to compare this relatively recently implemented regulation with Article 19 of the Manitoba Human Rights Code. It states:

Harassment

19(1) No person who is responsible for an activity or undertaking to which this Code applies shall

- (a) harass any person who is participating in the activity or undertaking; or
- (b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

"Harassment" defined

19(2) In this section, "**harassment**" means

- (a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or
- (b) series of objectionable and unwelcome sexual solicitations or advances; or
- (c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

19(2) makes reference to 9(2) which states:

Applicable characteristics

9(2) The applicable characteristics for the purposes of clauses (1)(b) to (d) are

- (a) ancestry, including colour and perceived race;
- (b) nationality or national origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;
- (f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender-determined characteristics or circumstances other than those included in clause (f);
- (h) sexual orientation;
- (i) marital or family status;

- (j) source of income;
- (k) political belief, political association or political activity;
- (l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

The Manitoba Human Rights Code was put in place in 1987. If you notice the only difference is that the recent Part 10 has added the portion including “physical size or weight”. That is truly the only difference.

What we desperately need in the province is the legislative protection that guards us as workers against incidents and campaigns of psychological harassment and bullying in the workplace. Two other Canadian provincial jurisdictions have enacted such legislation; Quebec and Saskatchewan. Quebec was the first to do so in 2002. In their legislation:

Section 81.18 of the Act defines psychological harassment as:

a vexatious conduct that manifests itself in forms such as hostile or unwanted behaviours, words, recurring actions that affect the employee’s dignity or their psychological or physical integrity, making the work place adverse to them.

Only one problematical conduct can also be considered psychological harassment if it affects the employee to that point and has a continuous adverse effect on them.

For a psychological harassment situation to be acknowledged, the 4 elements of the definition must be present. The vexatious conduct must:

- be repetitive or problematical
- be hostile or unwanted
- affect the person’s dignity or their psychological or physical integrity
- make the workplace adverse.

Saskatchewan’s legislation is similar in that it states:

(l) “harassment” means any inappropriate conduct, comment, display, action or gesture by a person:

- (i) that either:
 - (A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or
 - (B) subject to subsections (3) and (4), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated;
- and
- (ii) that constitutes a threat to the health or safety of the worker;

Currently coming forth in Ontario is another piece of legislation government is now also set to enact Bill 168. "Workplace harassment" is defined in Bill 168 as

"engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome".

While harassment is also prohibited under the Ontario *Human Rights Code*, Bill 168 defines harassment much more broadly than the *Code*, which requires a complainant to establish that harassment is based on a prohibited ground of discrimination (eg., race, sex, religion, etc.).

Another recent development in the national push to protect the health and wellbeing of workers is the regulation change initiative put forth by the Federal government. On May 8th 2008 the Canada Labour Code Regulations were amended to reflect the growing concern about the significant lack of violence and harassment legislative protections for workers who labour in the Federal jurisdiction. Here in Manitoba approximately 85% of our workforce is engaged in jobs and industries that fall under the purview of Federal jurisdiction. Most of these jobs deal with transportation, communication, and Federal crown corporations such as Canada Post. In reviewing the regulation we once again see that it is the definition of the term 'workplace violence' that provides us with a clear insight into the intent and purpose of this legislative protection.

Taken from: PART XX VIOLENCE PREVENTION IN THE WORK PLACE

20.2 In this Part, “work place violence” constitutes any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.

The new regulation goes further to call for the implementation of a policy that is jointly developed between labour and management, assessment, controls that should be utilized and put into place, procedures for response to incidents, and the type of investigation that should ensue after an incident.

A very interesting cost/benefit analysis was conducted during the preparation of this regulation. It shows remarkable projected monetary benefits, never mind the social and personal benefits, that are estimated to be attained after the regulations implementation.¹⁰

Summary of Economic Benefits and Costs to all Canadians

(Expressed in 2006 Constant Dollars (\$CDN), discounted at 10% over 20 years)

Total Benefits

\$161,848,654

Total Costs

\$ 82,965,606

Net Present Value (NPV)

\$ 78,883,048 — Benefits exceeding costs

Benefit-to-Cost Ratio

2:1

¹⁰ <http://gazette.gc.ca/rp-pr/p2/2008/2008-05-28/html/sor-dors148-eng.html>

So now we know what comparative jurisdictions have done in a proactive manner to deal with this very serious issue of personal/psychological harassment and bullying in the workplace. The ultimate question arising from this inquiry is what is Manitoba going to do? As previously stated we have had unanimous recommendation from the Ministers Advisory Council in regard to the recommendation that the definition of harassment be expanded to include personal/psychological harassment and bullying. So it seems as though either the Assistant Deputy Minister Don Hurst, former Minister of Labour Nancy Allen or former Premier Gary Doer thwarted the change unanimously recommended by the Advisory Council comprised of labour, employers and health and safety specialists.

In a meeting on November 2nd, 2009 with Assistant Deputy Minister Don Hurst, who is responsible for workplace health and safety at the Province of Manitoba, the proposed rationale for not accepting the recommendation became very clear. Several times throughout our meeting he stated concern about enforcement and the impact that this would have on resources. The question of “what do you want us to do about it?” was put towards the labour movement. We need to have a solid sustained answer.

Firstly, we need legislative protection from personal/psychological harassment and bullying similar to what has been implemented in Quebec, Saskatchewan, Ontario and Federally. Here in Manitoba this would take the form of changing our current Part 10 of the regulation to expand the definition of harassment further than that based solely on characteristics. The regulation would also require empowerment for the Provincial health and safety officers to enforce penalties for non compliance and discriminatory actions against workers. Currently officers can only say that a harassment policy must be posted

in the workplace, not necessarily complied with. The regulation should also empower the joint health and safety committee to elect two harassment councillors so that the internal responsibility system can alleviate some of the burden that will likely be imposed on the workplace safety and health branch of the provincial government. The provincial government itself will have to hire an estimated five additional staff to deal with this issue of enforcement and education once this regulation is enacted.

Manitoba is the greatest place to live in the world and as such we should be at the forefront of creating protections for all workers in the province. The Manitoba labour movement embodied in the Federation of Labour has a responsibility to push as hard as we can to ensure that we do get this change.

We need our affiliate unions input, suggestions and ideas of how we can achieve this and what it should look like. We thank you in advance for your time and consideration.

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