



# News from the B.C. Human Rights Coalition

www.bchcoalition.org

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## Anti-Bullying Legislation in Canada

Workplace bullying is of great concern to employers and employees alike. The issues have attracted significant media attention, and attention from governments in various Canadian jurisdictions. Momentum is growing to support anti-workplace bullying legislation. In Canada, four provinces have thus far passed anti-workplace bullying legislation. Sometimes bullying is referred to as “psychological harassment” or “personal harassment”.

Typical workplace bullying or psychological harassment is not based on any protected characteristic of the target and is therefore not covered under Canadian Human Rights Legislation. If the workplace bullying occurs as a

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result of a protected characteristic (race, religion, sexual orientation etc) then the target would have the protection provided by Canadian human rights legislation. In this article we are referring to bullying that is not due to a protected characteristic.

Currently someone suffering from workplace bullying has few legal options available to them. The BC Occupational Health and Safety Regulation (the “BCOHSR”), only prohibits physical, violent workplace harassment, not psychological bullying. If the bullying is physical in nature the target can file a complaint with WorkSafe BC and, if warranted, may ask for criminal charges to be laid. Although the BCOHSR allows for someone to be compensated for mental stress, it is only compensable if it is caused by a sudden and traumatic event. Most bullying is subtle in nature and often occurs by isolating or ignoring a target; it often has no physical component and the effects come upon the victim gradually.

If the bullying is psychological in nature, the target may complain to management and hope the situation is resolved, or if the situation is intolerable they may quit their employment and allege wrongful dismissal, or possibly file a tort action. Whether or not damages independent of breach of contract in employment are recoverable for injury suffered as a result of bullying in the workplace has not been fully decided.

## The need for anti-bullying legislation

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In British Columbia, an 800 house telephone survey found 28% of households had experience with the phenomenon of workplace bullying. [1] According to recent research in the U.S. almost 75% of surveyed employees had experienced workplace bullying as either a target or a witness [2].

As reported on the UK website, Bully Online, “[r]easarch by professor Cary Cooper and colleagues at UMIST published in February 2000 reveal that out of 5300 employees in 70 organizations, 47% reported witnessing bullying in the last five years, 1 in 10 (10.5%) said they'd been bullied in the last six months and 1 in 4 (24.4%) said they'd been bullied in the last 5 years.

[1] <http://www.lornemayencourtmla.bc.ca/EN/3874/68298?PHPSESSID=5cda6fc97117d648143edc106441d344>

[2] *Aggressive Behavior: Workplace Bullying and Its Effect on Job Satisfaction and Productivity*, doctoral dissertation by Dr. Judith Lynn Fisher-Blando, University of Phoenix, 2008.

In *Haggarty v. McCullough* 2002 A.J.No.7 (AB Prov. Ct.) the plaintiff was awarded damages for psychological injury resulting from bullying at work, separate from the damages for constructive dismissal, but this kind of decision is rare.

There are currently no simple and streamlined options for targets of psychological harassment/bullying in the workplace in B.C., such as complaining to an administrative tribunal.

There have been numerous attempts, as yet unsuccessful, to pass workplace anti-bullying legislation in various states in the United States. This has been done by way of providing an exception to the exclusive remedy (by way of OHS legislation) and making bullying a separate actionable tort. Under this statute the injured employee would be allowed to bring an action in circuit court against the employer and/or co-worker. An example of this is Wisconsin's Bill 894 [4]

### Legislation in other Canadian jurisdictions

As of February, 2011 Four Canadian jurisdictions have implemented workplace anti-bullying legislation; they are Quebec, Saskatchewan, Manitoba and Ontario. Up until 2008 there was an inequity due to the bifurcated jurisdictional structure; only those employees working in provincially regulated workplaces benefited from these protections. Employees in federally regulated workplaces did not enjoy similar protection against psychological harassment. Since 2008 they have been covered under federal OHS legislation [5].

There are many approaches to dealing with bullying. In the United States, which as of yet has not passed any legislation, the approach has been to attempt to have it passed at a State level with legislation defining bullying as a tort. The other options are to incorporate anti-bullying legislation into Occupational Health and Safety (WCB), Employment Standards, or Human Rights legislation.

### The BullyFreeBC campaign

The BC Human Rights Coalition has been working with BullyFreeBC to highlight the need for legislation in BC. In consultation with its members BullyFreeBC has proposed changes to the Workers Compensation Act of BC. This would include amending the Act to include a section dealing with "Personal Harassment".

## The need for anti-bullying legislation...Continued..

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Those who reported being bullied within the last six months consistently reported the poorest health, the lowest work motivation, the highest absenteeism figures as well as the lowest productivity compared to those who were not bullied.

Those who witnessed bullying at work were also more likely to report poor health and low morale than those who worked in bullying-free environments [3]."

Increasingly, workplace bullying is recognized as a contributing factor to workplace addiction problems, workplace violence, high turnover and recruitment costs, an increase in long term stress disability claims, absenteeism and "presenteeism" (where workers show up but don't do any productive work), low overall productivity rates, and the development of chronically toxic workplaces.

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[3] Bully Online: <http://www.bullyonline.org/workbully/costs.htm> (retrieved Oct. 5, 2009)

[4] See attached from: [www.healthyworkplacebill.org](http://www.healthyworkplacebill.org)

[5] Federal Labour Regulations – May 2008 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.

## Proposed Definition of "Harassment"

Personal harassment is defined as any inappropriate conduct, comment, display, action, or gesture by a person that adversely affects the worker's psychological or physical well-being or that a reasonable person knows or ought to know would cause a worker to be humiliated or intimidated.

- a) Personal harassment is not limited to but also includes the act of intentionally causing harm to others, through verbal harassment, intimidation or other more subtle methods of coercion such as manipulation, including ignoring and isolating the person.

To constitute harassment there must be;

- a) repeated conduct, comments, displays, actions or gestures; or
- b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker must be established.
- c) Personal harassment can exist even where is no intention to harass or offend.

## Duties of Employer

Every employer shall ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment.

An employer with 10 or more employees shall,

- a) prepare a policy with respect to workplace harassment; and
- b) review the policies as often as is necessary, but at least annually;
- c) the policies shall be in written form and shall be posted at a conspicuous place in the workplace;
- d) an employer shall develop and maintain a program to implement the policy with respect to workplace harassment;
- e) an employer shall provide a worker with information and instruction that is appropriate for the worker with respect to workplace harassment;
- f) include measures and procedures for workers to report incidents of workplace harassment to the employer;
- g) set out how the employer will investigate and deal with incidents and complaints of workplace harassment; including a statement of accountability measures.

## Management Rights

Harassment does not include anything that falls within legitimate management rights such as;

Reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer's workers or the place of employment.

## Process

Where an employee makes an allegation of personal harassment the employer/employee must submit a claim to WCB. When the harassed employee does not miss work and where WCB determines that there is a need to conduct an investigation to make findings and/or resolve the issue WCB may dispatch an investigator. Where the employee does miss work as a result of the personal harassment a WCB investigator shall be sent to investigate.

## Remedies

A harassed employee is entitled to the same remedies as any other injured worker. At the discretion of the WCB, and upon a finding of harassment, WCB may fine the employer and may pay to the harassed worker compensation for injury to dignity.

The BC Human Rights Coalition is available for **EDUCATION ON HUMAN RIGHTS ISSUES THROUGHOUT THE PROVINCE**. Courses can be customized in the length and content but mostly focus on understanding human rights principles, how to develop a respectful workplace and human rights policy, how to deal with general complaints, how to deal with formal human rights complaints, understanding options in the human rights Tribunal process, and how to defend against a complaint. Although the emphasis will be on human rights in the context of employer/employee relationships some education will deal with the duty of employers as service providers and their duty to clients. Although it is anticipated that the education will be delivered to small business owners/managers, or union members, or workers, the benefits of the education are intended to flow-through to the employees. The goal is to provide education to assist in avoiding workplace conflict, and if it arises to have procedures in place to effectively and efficiently deal with the conflict. Our full day programme, or other customized classes are available by contacting *Svetlana Khakhleva, BC Human Rights Coalition* at [svetlana@bchrcoalition.org](mailto:svetlana@bchrcoalition.org) or (604) 689-8474, ext. 216

◆ **Rosemary Brown Award Reception on Wednesday, June 1, 2011 at 2:00 pm**

Place: Hycroft House, University Women's Club,  
1489 McRea Avenue, Vancouver, BC  
This event is sponsored by the Rosemary Brown Award partners:



◆ **Human Rights and Employment Seminar on June 21, 2011**

One day seminars intend to assist employers and employees.  
For more information, check our website at [www.bchrcoalition.org](http://www.bchrcoalition.org)

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This newsletter and past issues are also available online at: [www.bchrcoalition.org](http://www.bchrcoalition.org).

**TO GET YOUR NEWSLETTER BY EMAIL, PLEASE CONTACT SVETLANA at [svetlana@bchrcoalition.org](mailto:svetlana@bchrcoalition.org)**

**MEMBERSHIP** The Coalition is a membership based organization. We currently have approximately 100 individual and group members, and we always welcome new members to our ranks. In addition to supporting the advancement of human rights, other benefits of membership include: opportunities for networking, collaboration and training; opportunities to remain informed on current issues and concerns relating to Canada's domestic human rights law and policy; opportunities to host or sponsor educational workshops and training sessions in your community; opportunities to promote you own events; and the opportunity to be part of a great organization.

Annual membership fees are \$20.00 for both organizations and individuals. In the case of need, we will consider waiving this fee. Tax receipts are available for all donations. If you wish to join, please complete the application below and return it, with a cheque made out to the **BC Human Rights Coalition**. If you would like further information on becoming a member, or to check the status of your membership, please call or email us [info@bchrcoalition.org](mailto:info@bchrcoalition.org).

**Membership Information** (please fill out and remit with cheque)

Individual or Contact Name: \_\_\_\_\_

Company or Business: \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Postal Code \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

Membership (individual or group) \_\_\_\_\_