

“Perfection Is Not The Standard For Managers”



Ontario's *Occupational Health and Safety Act* (the "Act") generally defines "workplace harassment" 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, or workplace sexual harassment."

Of course, employees may subjectively perceive routine management, including performance management, to be unwelcome behaviour. That's why a little further down in the definitions section of the Act, the legislature has provided the important clarification that "a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not harassment." Similar clarifications are made in relevant legislation and policy in other Canadian jurisdictions.

Determining whether subjectively unwelcome supervision or management is harassment comes down to what is "reasonable." Courts and tribunals have confirmed that engaging in management of an employee by doing things like assigning work, evaluating performance, counselling and disciplining, and otherwise supervising employees will not constitute harassment, as long as they are done "reasonably." In general, a manager's conduct becomes unreasonable where there is no reasonable excuse for the behaviour and/or the intensity of the behaviour goes beyond the norm.

Courts and tribunals do not, however, hold managers to a standard of perfection in exercising their authority. Not every instance of a manager being rude or inconsiderate will attract a finding of harassment. For example, in *OPSEU (Yousif et al) v Ontario (Attorney General)*, 2021 CanLII 95698 (ON GSB), a case where a manager yelled at an employee and directed her to return to her desk in front of others, and, on another occasion, got angry and stormed out of disciplinary meeting, the adjudicator found that the manager's conduct was "hurtful and disrespectful to employees" and a recipe for "conflict" but did not rise to the level of harassment." In *OPSEU (Grievor) v Ontario*, 2015 CanLII 20923 (ON GSB), the adjudicator did not make a finding of harassment where a manager raised her voice and slapped the table during a meeting she had with a subordinate to discuss performance issues. Noting that "perfection is not the standard," against which managerial behavior is to be judged, the adjudicator specifically noted that the manager apologized to her subordinate during the meeting and acknowledged at the hearing that that her conduct was "not appropriate for a business meeting."

More recently, in *Innvest Hotel GP Ltd. (Hyatt Regency Vancouver) v Unite Here Local 40*, 2023 CanLII 76299 (BC LA), Arbitrator Beharrell found two supervisors did not harass the Grievor even though their communications with the Grievor were “direct,” “abrupt, dismissive, and unhelpful,” and did not take into account the information the Grievor provided. On the first day, the Grievor’s supervisor, Ms. Buksh, refused to hear the Grievor’s reasons for cleaning a room that had not been assigned to her, refused to credit the Grievor for the work she had done, and hung-up without warning to end her conversation with the Grievor. On the second day, the Grievor went to another supervisor, Mr. Teimorian, to complain about Ms. Buksh’s behaviour the previous day. When Grievor became upset during their meeting and said she was going to speak to the General Manager or Human Resources, Mr. Teimorian also became upset and told the Grievor in a loud voice that she should leave the office and go to the General Manager but emphasized that she was not new to management. On the third day, Mr. Teimorian told the Grievor over the phone that he wanted to have a discussion with her because an inspection of a room she cleaned revealed that she failed to remove a wine bottle and some bags. The Grievor refused to meet with Mr. Teimorian and went on sick leave because of the distress she experienced because of Ms. Buksh and Mr. Teimorian’s actions over the course of the three days.

Arbitrator Beharrell accepted that the supervisors’ conduct had a negative affect on the Grievor’s mental health but emphasized that the Grievor’s subjective reaction to the conduct was not determinative. Evaluating the supervisors’ behaviour objectively, Beharrell found that the supervisors acted within the scope of their authority and, therefore, did not engage in harassment, even though they were “direct,” “abrupt, dismissive, and unhelpful.”

While the cases above demonstrate that a finding of harassment will not necessarily be made every time a manager is rude, dismissive, or momentarily displays anger, more intense manifestations of such conduct will cross the line into harassment.

In *Strizzi v. Curzons Management Associates Inc.*, 2011 ONSC 4292 (CanLII), Justice Aitken offered the following guidance on when a manager’s inappropriate behaviour crosses the line:

Although disagreements, disappointment, criticism, disciplinary action, and difficult – even heated – exchanges are common and expected aspects of employment relationships, and anger and frustration may be expressed at those times, employers do not have the right to harass, humiliate, belittle, and berate employees as they go about their responsibility of managing and supervising them. They do not have the right to yell and swear at employees and call them ‘every name in the book.’ When employers carry matters to this extreme, they risk the employee reasonably concluding that continued employment is intolerable.

In *Strizzi*, the employee’s manager yelled at him, called him names, falsely accused him of ruining his business, and repeatedly told him how useless he was. The Court held that such bullying behaviour made the employee’s continued employment untenable.

In general, personal attacks, like telling an employee they are “useless” or “pathetic,” swearing at employees, or repeatedly subjecting employees to outbursts of anger or unjustified criticism will cross the line from incivility or rudeness into harassment.

Key takeaways:

From the perspective of organizational health and productivity, the type of rudeness and dismissiveness displayed by supervisors in the cases mentioned above are undesirable. As Grievance Settlement Board Vice-Chair Briggs observed, even insensitivity or rudeness that falls short of harassment is a recipe for conflict.

However, as the adjudicators above observed, harassment is not established every time a manager's conduct falls short of the ideal. Harassment is not even necessarily established every time a manager loses their cool. If, however, outbursts of anger are markedly more intense and/or more frequent than might generally be expected in a workplace, they may cross the line into harassment. That line is also crossed by managers who swear at employees, call them names, or otherwise engage in personal attacks against employees. Even in cases where a manager's conduct does not meet the test for harassment, employers may consider offering the manager training or other assistance to prevent future conflict from arising.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: [Chris Davidson](#)

Turnpenney Milne LLP