

# Politics At Work: Managing Political Speech In The Workplace



With election season likely around the corner, Canadian employers may have to navigate and manage disruptive political expression or activism in the workplace. This raises the question of when political speech or activity in the workplace is an employer's business, and how this risk can be managed.

## **Is political belief a protected ground?**

Managing political speech has human rights implications in some jurisdictions. In Western Canada specifically, human rights legislation in both British Columbia and Manitoba includes "political belief" as a protected ground. Political belief is not a protected ground in Saskatchewan or Alberta; however, employers should be mindful of the potential human rights considerations and the location of their employees when addressing political belief disputes in the workplace.

## **Managing political expression in the workplace**

In some cases, political expression and advocacy at work can disrupt or negatively impact the workplace and the reputation of the employer. Although citizen involvement in politics is important and employees are entitled to freedom of speech and their political views and opinions, carefully and clearly drafted social media policies and codes of conduct allow an employer to effectively address political activities that may disrupt the workplace or negatively impact their business in a real and substantial way.

Activities that may be subject to such a policy include:

- Making political representations that could be interpreted to be made on behalf of the employer;
- Making political representations that harm the employer's reputation or business;
- Making political contributions on behalf of an employer;
- Displaying, sending or soliciting political material during work hours or on the employer's property; and
- Engaging in political activities during work hours or on the employer's property.

## **The role of respectful workplace policies**

Violence and harassment policies may also play an important role in limiting disruptive political expression in the workplace.

Saskatchewan employers must prevent, to the extent reasonably practicable, or otherwise address expression (political or otherwise) that is contrary to human rights or harassment protections under *The Saskatchewan Human Rights Code, 2018* and *The Saskatchewan Employment Act*. Accordingly, political speech in the workplace that is hateful or that results in the harassment of another worker must be addressed by employers.

### ***Coca Cola Canada Bottling Inc v Teamsters, Local Union 213 (Davis Grievance)***

In *Coca Cola Canada Bottling Inc v Teamsters, Local Union 213 (Davis Grievance)*, 2021 CarswellBC 484, for example, the employer implemented a masking policy during the COVID-19 pandemic. The grievor chose to wear his own bandana as a mask, which featured a representation made up of part of a Confederate flag with a picture in the middle of a Confederate soldier encircled by the words “The South Will Rise Again.” One of the grievor’s co-workers reported the mask to a supervisor. After being told the mask was inappropriate, the grievor immediately removed it and used a different mask.

In an earlier incident, where a different worker had hung a noose in the workplace, the grievor expressed during the investigation that it was a joke and he did not understand why the employer was taking it so seriously. As a result of these incidents, the grievor’s employment was terminated with just cause.

In assessing the termination, Arbitrator Noonan found the grievor did not have any intention to commit a racist act in wearing the flag mask, but the conduct was inappropriate and warranted disciplinary action. The Arbitrator also took note of the fact that the grievor had worn the bandana with a Confederate flag as a head covering numerous times in the workplace, and no one had ever raised an issue.

Ultimately, Arbitrator Noonan substituted a five-day suspension and ordered compensation for lost wages and benefits. However, Arbitrator Noonan warned that “[i]f the Grievor had not removed the mask immediately when he was asked to do so; if he had claimed as an expression of free speech the right to wear the bandana; if he had been resentful or combative; if he had challenged the wisdom of the Employer’s request to remove the mask or even argued whether it was covered by the Anti-Harassment and Discrimination policy; if he had had a disciplinary record, particularly for harassment; if he had in any way indicated support for racism in the workplace – if any of these had been present, I would have considered the case in a very different light.”

### ***Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic***

*Saskatchewan Polytechnic Faculty Association v Saskatchewan Polytechnic*, 2020 CanLII 78471 (SK LA), also dealt with a termination for just cause. The grievor’s co-worker sent an email to all employees of the employer soliciting donations for the employer’s Indigenous student holiday hamper. The grievor replied to the email stating, “Have we not given enough already. Be like the rest get jobs.” The grievor subsequently made various statements, including: “taxpayers give enough, I work for what I have, they don’t work and get handouts;” “why can’t they have a job;” “we’ve given, all we’ve done is give;” “you guys get free education – my son goes to university and he paid tuition and he says they don’t have to” and “we’ve given

enough – residential schools and land.”

As a result, the grievor’s co-worker made a complaint to the employer’s harassment consultant. Following the investigation, the employer terminated the grievor’s employment for just cause.

In assessing the termination, Arbitrator Wallace noted the employer had just cause for discipline given that the comments were racist, verbally abusive and displayed a complete lack of understanding of Indigenous history, culture and life experiences.

The comments were a direct violation of the employer’s Code of Conduct, which Arbitrator Wallace held was an aggravating factor. Further, the comments amounted to serious misconduct, especially considering his position as an instructor placed him in a position of authority. Arbitrator Wallace considered the grievor’s expression of remorse, apology letter and steps taken to educate himself on Indigenous issues and history as mitigating factors.

Arbitrator Wallace stated although the grievor’s comments were disrespectful and offensive, there was a potential for rehabilitation through education. In conclusion, Arbitrator Wallace found a more appropriate response would be a six-month unpaid suspension and a requirement for the grievor to attend the employer’s Indigenous awareness training.

These two cases demonstrate the importance of harassment and discrimination education and training for the workplace, policy and consistent policy enforcement.

## **Takeaways for employers**

At this time, employers should consider reviewing their policies in anticipation of the upcoming election. Where policies are up-to-date, communications and training for managers, supervisors and employees on respectful workplace policies, social media policies and codes of conduct may serve as useful reminders to help mitigate any potential issues which may arise.

**To learn more about employer rights when managing these risks, and strategies for addressing the complexities of employee free speech, join us at the Saskatchewan Labour Update seminar in [Regina, Saskatoon and virtually](#).**

*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.*

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