

**IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR PURSUANT TO SECTION 3-54 OF
THE SASKATCHEWAN EMPLOYMENT ACT, SS. 2013, Chapter S-15-1**

BETWEEN:

ANGELA MONOGOVIOUS

Appellant

AND

SASKATOON CO-OPERATIVE ASSOCIATION LIMITED

Respondent

AND

**Director, Occupational Health and Safety, Ministry of
Labour Relations**

Respondent

Decision Appealed from: Occupational Health Officer Decision September 12, 2017

Hearing Date: March 23, 2018

Adjudicator -

Marlene Weston

For the Appellant, Angela Mongovius -

Dawn McBride,
United Food and Commercial Workers
UFCW Local 1400
Marilynnne MacFarlane
Representative for UFCW Local 1400

For the Respondent, Saskatoon Coop Association Limited -

Shannon Schultz, Saskatoon Co-op
Association Limited
Shannon Whyley,
MLT Aikins, Barristers and Solicitors

For the Respondent, Director, OH&S -

no representation



DECISION

I Introduction

- 1 Angela Mongovius has appealed an Occupational Health & Safety Decision dated September 12, 2017 (the "Decision") to an adjudicator pursuant to s. 3-53 and s.3-54 of *The Saskatchewan Employment Act* (the "Act"). I have been appointed as Adjudicator to hear this case.
- 2 The Report deals with a complaint of harassment from worker Angela Mongovius ("Ms. Mongovius") made to the Harassment Prevention Unit of Occupational Health and Safety (OH&S) in Saskatoon on May 2, 2017 against her employer, Saskatoon Cooperative Association Limited ("Saskatoon Co-op").

- 3 Upon receipt of my appointment as Adjudicator, I contacted the parties to determine how they would be represented. I was advised that the Saskatoon Co-op would be represented by counsel, Shannon Whyley of MLT Aiken. Ms. Mongovius would be represented by Dawn McBride of United Food and Commercial Workers Local 1400. The Director of Occupational Health and Safety confirmed that the Director would not be attending or making representations in this appeal.
- 4 Through the representatives, Dawn McBride and Shannon Whyley, a pre-hearing conference by telephone was arranged by me for Tuesday, January 16th, 2018 at 8:30 am. An Agenda was circulated to the parties prior to the conference call on January 11, 2018.
- 5 At the beginning of the call, the parties confirmed my appointment as Adjudicator.
- 6 During the call, I asked what efforts if any had been made to resolve the situation, and what efforts might still be made for settlement. Parties agreed that they would advise me if there was any efforts that will still be made for settlement. When asked what process would be used for the resolution of the matter, the appellant indicated that the process would be by adjudication.
- 7 The parties discussed the scope of the issues that would be adjudicated:
 - a. The Appellant's representative, Dawn McBride, advised that the scope of the appeal contained in the Notice of Appeal was set out specifically because the decision rendered by the Occupational Health and Safety Officer, Shawn Tallmadge, was based on the 'recommendations' and 'steps' made in the Investigator's Reports that have not been communicated to the Appellant or to her Union. Therefore the decision is being appealed.
 - b. The Appellant is accepting the Findings and Conclusions of the investigation Reports that were prepared by the independent investigator, Sheila Denysiuk, QC. The allegations of harassment originally filed by the Appellant will not be litigated as part of the scope of the adjudication.
 - c. Parties agreed that given the scope of the issues, one day would be sufficient for the hearing.
 - d. Date and location of the hearing were set as Friday, March 23, 2018 in Saskatoon. The parties agreed that there were no other preliminary matters to be discussed. Minutes of the meeting were prepared by the Adjudicator and distributed on January 16, 2018.
- 8 The Hearing Notice was prepared by the Adjudicator and filed with the Registrar of the Labour Relations Board, on January 19, 2019. The representatives for the Appellant and Respondent were notified of the Hearing Date and confirmed by email on March 19 and 20, 2019 respectively that the parties would be present.
- 9 A request from the Representative for the Respondent, Ms. Whyley, was made for a copy of all information in the possession of the Director OH&S that is related to the appeal. The information was sent to Ms. Whyley on February 14, 2018. In order to

observe transparency in communication, a copy of the material was also sent to Dawn McBride on February 27, 2018.

10. The Hearing proceeded on March 23, 2018, in Saskatoon, SK with all representatives for Appellant and Respondents except the Director of OH&S present. The Adjudicator outlined the Process Direction for the Hearing:

For the Record:

- a. Parties and Representatives were introduced. It was noted that there were no absences.
- b. The Adjudicator's authority was confirmed.
- c. The Procedure to be followed during the hearing.
- d. Filing of admissions or document by consent as exhibits. Exhibits will be stamped with number, date and initials of whose exhibit it is.

Commencement of Hearing

- a. Request for preliminary objections by the parties.
- b. Order excluding witnesses (excepting parties) from the hearing if requested or expected by the parties.

Order of Evidence: Appellant

- a. Opening Statement of Appellant and possible Respondent
- b. Swearing in of Witness
- c. Direct examination by Appellant
- d. Cross examination by Respondent
- e. Re-examination if any by Appellant
- f. Repeat for each witness
- g. Close of Appellant's case

Order of Evidence: Respondent

- a. Opening statement of Respondent if not already given
- b. Swearing of witness
- c. Direct examination of Respondent
- d. Cross examination if any by Appellant
- e. Re-examination, if any, by Respondent
- f. Repeat for each witness
- g. Close of Respondent's case

Rebuttal by Appellant.

- a. Rebuttal of evidence, if any by Appellant, including direct, cross examination and re examination.

Closing Arguments of Appellant and Respondent

Date for Award

Close of Hearing

11. At the commencement of the hearing, both parties agreed that there were no preliminary objections by either party, and that there would be no exclusion of witnesses.

II Background re Harassment Complaints to Saskatoon Coop

12. Ms. Mongovius is employed by the Saskatoon Co-op. She has been employed by the Appellant in a number of positions since 1992 and at present works in the Liquor

Store operated by the Saskatoon Co-op.

13. During April, 2017 Ms. Mongovius made complaints to the Saskatoon Co-op alleging harassment by a number of personnel at the Liquor Store including out-of-scope managers, in-scope supervisors, and in-scope employees.
14. In order to investigate the complaints, the Saskatoon Co-op retained an independent third Party, Sheila Denysiuk, QC. Ms. Denysiuk investigated the complaints over four months including interviewing parties involved, reviewing documents and preparing reports.
15. In August of 2017, Ms. Denysiuk completed her investigation and subsequently provided the Saskatoon Co-op with a number of reports referred to in the Brief in Law provided by Shannon Whyley page 2 as follows
 - a. dated August 11, 2017
 - b. dated August 18, 2017 regarding a harassment complaint against Dawn Wreford
 - c. dated August 21, 2017 regarding a harassment complaint against Carol Vinding
 - d. dated August 25, 2017 regarding a harassment complaint against Anita Perrot.
 - e.

The Saskatoon Coop provided copies of the August 18, 21 and 25 Investigation Reports to Mr. Tallmadge the OH&S Officer and they are contained in the file that was delivered to and received by the representatives for the Appellant and the Respondent. The Report referred to as dated August 11, 2017 was not shared with Mr. Tallmadge.

16. During the Pre Hearing Conference Call, the Appellant's representative advised that the Appellant is accepting of the Findings and Conclusions of the Reports prepared by Sheila Denysiuk QC. The allegations of harassment originally filed by the Appellant will not be litigated as part of the scope of this adjudication.

III Background re Harassment Complaint to OHS

17. On May 2, 2017, Ms. Mongovius met Susan Boan and Shawn Tallmadge, OH&S Officers, and filed a harassment complaint with the Legal Affairs Branch of the Harassment and Discriminatory Action Prevention Unit, Occupational Health and Safety Division, Saskatoon, Saskatchewan. The complaint was based on the same incidents that formed the basis of the complaints filed with the Saskatoon Coop. Ms. Mongovius advised that there was an investigation being undertaken by Saskatoon Co-op but she was not certain who was undertaking it.
18. In a letter dated May 9, 2019 and addressed to Sharon Schultz, Manager of Human Resources for the Saskatoon Co-op, Shawn Tallmadge related that "Ms. Mongovius stated she brought forward concerns of harassment to Sharon Schultz, Human Resources, in March 2017." Mr. Tallmadge then stated in the letter, "At this time I am

requesting written documentation be provided to our office by May 26, 2019 regarding the status of Ms. Mongovius's complaint as well as the result of the investigation once the investigation is concluded. Mr. Tallmadge referred to sec. 36 of *The Occupational Health and Safety Regulations, 1996*. The section requires employers to create a harassment policy based on the legislative definition of harassment and then to enforce the policy and investigate complaints of harassment as they occur within the workplace.

19. Reviewing the OH&S File, Mr. Tallmadge had a conversation with Sharon Schultz, Manager of Human Resources on May 18, 2018 in which she provide an update regarding the investigation and other issues. On July 26, 2017, Shawn Tallmadge noted a conversation with Sharon (incorrectly noted as Sheila) Schultz where he noted in writing 'all is going well. Investigation is still going forward.'
20. The OH&S File includes emails/letters dated August 22, 25 and 28 containing the three Investigation Reports that had been completed by Sheila Denysiuk, QC.
21. On September 6th, 2017, there was a conversation between Shawn Tallmadge and Sharon Schultz. His notes Indicate she said that:
 - they will be dealing with harassers, and following investigator's recommendations as far as the Rep9rt goes.
 - Can't return Angela now as there are issues with WCB.
 - Discussed finalizing file.
 - Sharon will let me know more information when they finalize.
22. Shawn Tallmadge, OH&S Officer, provided his decision regarding the file in a letter dated September 12, 2017(incorrectly noting the complainant to be 'Colleen Stenhouse') addressed to Angela Mongovius and the Saskatchewan Cooperative Association Ltd. His decision was started on Page 1 and concluded on Page 2:

"It our determination that the employer conducted an investigation into the allegations brought forward by Ms. Mongovius' complaint and worked diligently to resolve this matter in the best interest of all parties affected. The conclusion of the investigation was that the harassment was substantiated in certain circumstances and not in others. Further, the employer has stated that there will be follow up from the investigator's recommendations and information/documentation provided, indicates the steps taken to address each of the complaints brought forward by Ms. Mongovius. It is the decision of OHS that Saskatoon Cooperative Association Ltd has met its duties in meeting the requirement of *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations*. Therefore, there is no reason for further involvement of OHS in the investigative or complaint process."
23. On September 26, 2017, Ms. Mongovius filed a Notice of Appeal of the decision delivered by Shawn Tallmadge September 12, 2017. She stated:

"In the correspondence shared with both the Saskatoon Cooperative Association and myself, Mr. Tallmadge indicates that the follow up from the investigator's recommendations and the steps taken by the employer to address each of the complaints brought forward led to the decision to find that the employer has met its duties in meeting the requirements of *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations*.

I am appealing this decision for a number of reasons, but specifically because the decision to deny the complaint based on "recommendations" and "steps" have not been communicated to me or to my Union is wrong. I can assure you that the employer has not communicated to me what the steps are and find it troubling that my OH&S complaint can so easily be denied based on unknown recommendations and steps."

IV Evidence

24. Opening Statement by Appellant's Representative – Dawn McBride

- a. Dawn McBride argued that this is not a complicated matter. There is one point, the OH&S Act has a duty that has not been fulfilled. The principle issue is that the employer has taken steps to make the workplace safe from harassment. The OH&S Officer in his report has said that the Saskatoon Coop has stated that they have taken steps, but not what they have done.
- b. The Appellant is not challenging the harassment findings.
- c. The problem in assuring that Angela can return to the Workplace.

25. Opening Statement by Respondent's Representative – Shannon Whyley

- a. The Respondent's Representative, Shannon Whyley, stated that she will be making several points in evidence through the witness, Sharon Shultz.
- b. The Employer is perplexed about the source of the Employee's appeal. The Employee brought complaints to the Employer. Employer hired an independent 3rd party to do the Investigation Reports. Reports were shared with OH&S and also with the Union. The Respondent understands that the Appellant is not challenging the findings of the Investigator, Sheila Denysiuk QC.
- c. It is not clear to the Respondent what the Appellant is asking for. Respondent stated that there would have been better ways of finding out what had been done by the Employer to fulfil the recommendations than filing an appeal. The Respondent states that it has fulfilled its statutory duty. Saskatoon Coop will be asking for the appeal to be dismissed.

26. Examination in Chief of Appellant Angela Mongovius by Dawn McBride

- a. Angela Mongovius testified that she had been working for the Saskatoon Co-operative Association and was in her 26th year. She has done a number of duties – starting with bakery, landscaping, and now in the liquor store until March, 2014.

- b. She laid harassment complaints against people at the Liquor Store - Anita Perrot, and Dawn Wreford specifically:
 - Anita – Appellant was being belittled and singled out, excluded from learning and training. There was discrimination releasing private information to other Employees. Scheduling was horrific. Her title is Liquor Store Manager.
 - Dawn Reffert – Liquor Procurement /Somelier Manager physically assaulted the Appellant and verbally damaged her mental health.
- c. The Appellant left the Store right after she laid the complaint. She left the 1st week of January, 2017. She has been off work one year. She has been on Workers' Compensation since that time.
- d. What the Employer has offered has been – relocation to any other store and any possible job. There has been no other communication that she would be reinstated. There was no return to work suggested.

27. Cross Examination of Appellant by Shannon Whyley

- a. Ms. Whyley asked the Appellant to confirm she had worked for 26 years for the Employer; also that the Appeal related to a decision by OH&S in relation to complaints that were filed and that Ms. Mongovius had raised the complaints internally before the complaints to OH&S were laid. Ms. Mongovius had notified Sharon Schultz, but the Appellant had started with Kaitlyn Zunttee. The Union was assisting Ms. Mongovius with the issues. They met 2 days prior to meeting with Ms. Zunttee.
- b. Ms. Whyley asked about Exhibit 1 introduced by the Appellant which was the Harassment Confidential Questionnaire and asked if this is the form that she originally filed on April 2. the day she met with Shawn Tallmadge. Ms. Mongovius confirmed that she had filled out the Questionnaire.
- c. Ms. Whyley asked about Ms. Mongovius' meeting with Sharon Schultz and Marilynne MacFarlane May 2. Ms. Schultz said the Employer would have to consider relocating her. Ms. McBride was saying that there were no grounds for insisting that she could not return to the Store. Ms. Schultz had an email that both Anita and Dawn were saying that they did not want to have her return to the store and that they would not train her any further. Ms. Schultz was saying that it was not in Ms. Mongovius' best interest to return to the store. Suggestion of finding another place to work was made by Ms. Schultz.
- d. After that meeting Ms. Mongovius left the store and has not returned to work.
- e. Investigations were conducted while she was off on medical leave. She was at first getting information from Marilynne MacFarlane, but then that dropped off. She was sending letters and notes to the Union but did not get any return correspondence about what to do.
- f. Lucy Figarito as a member of the Union was providing some assistance. Ms. Mongovius did meet with her and possibly Marilynne but could not remember if Marilynne was present.
- g. Ms Whyley advised that she had followup questions. She questioned about the email that had been sent from Anita and Dawn to Shannon Schultz. In the meeting only Ms. Mongovius were allowed to view it. Her comments are based on memory of what she saw at the meeting. She did not get a copy.

- h. Questioning concluded.
- i. Close of Appellant's Testimony.

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Examination in Chief of Sharon Schultz by Respondent's rep Shannon

Whyley:

- a. Shannon Whyley ask how long Sharon Schultz had been employed at SK Coop. She responded since Oct 2010. Of which was 7.5 years was as Human Resource Manager. Her education and training was a Business Administration Degree from University of Saskatchewan. She was employed at Maple Leaf Foods before. She manages all Human Resources for Coop – all facets.
- b. Ms. Mongovius is still employed by the Saskatoon Coop. She is currently on a leave. She works with Wine Spirits and Beer as a liquor clerk. She is a member of the bargaining union. Last day of work was March 29, 2017.
- d. Ms. Whyley asked what Ms. Schultz's personal involvement was with the complaint by the Appellant.
 - o Craig Teebo was Marilynne's predecessor and brought forward Ms. Mongovius' concerns in the fall of 2016. Sharon did not attend the meeting.
 - o There were other concerns raised up until March, 2017 and the incident involving Wreford. There were requests by Ms. Mongovius for leave at Christmas that Ms. Schultz denied because of timing. After the incident with Wreford she asked Ms. Mongovius to put her complaints in writing. Because there were a number of employees listed in the complaint Ms. Schultz brought in an independent investigator.
 - o There was a meeting held in early April with the Appellant and Marilynne MacFarlane. Sharon Schultz told Angela that she could not put her back in the store. It was not in her best interest as her health was suffering and she would be back with the employees she was complaining about. The Union said that she could not be removed from the store. Ms. Schultz said she had a duty to accommodate by placing her elsewhere. Ms. Mongovius said she was not going to accept the duty to accommodate that was offered. Sharon was not willing to return her to the store. She had some challenges with that as there were many Employees named in the complaint and with the investigation being conducted. In the alternative, Angela could work in any food store where she was working before. Ms. Schultz was aware of responsibility to offer her something so she could continue working while the investigation was taking place.
 - o Did Ms. Schultz recall an email by Dawn and Anita that was referred to by Ms. Schultz? Ms Schultz said that if she had given them an email to read, she would have given them a copy to keep, not taken it back. Point is they could not have sent a joint email. If there is an email, she would need to be reminded of it because she does not remember it.
- d. Ms. Whyley introduced Exhibit 4, an email from Marilynne MacFarlane to Sharon Schultz dated April 24, 2017 in which Ms. MacFarlane reminded Ms. Schultz that she had stated she would be removing Angela from the workplace; however Union reminded Ms. Schultz that she is not in a position to relocate Ms. Mongovius. Ms. MacFarlane was asking for a copy of the Saskatoon Coop

Harassment and Bullying policy. It had a policy at that time. Ms. Shultz then introduced Exhibit 5, the Employee Handbook. Sharon Schultz acknowledged that on page 15 is Personal Harassment.

- e. Sharon Schultz then decided to hire a Third Party – Sheila Denesyk QC to conduct an Investigation. Exhibit 6 being an email from Ms. Mongovius was entered into evidence. Angela was asking for time off until matter was settled. She had been talking to OH&S. Email also included email from Sharon notifying Ms. Mongovius of the hiring of a 3rd party to conduct investigation.
- f. Ms. Schultz was notified by OH&S by a letter from Shawn Tallmadge that there was a complaint that had been filed dated May 9th. She would have called Mr. Tallmadge to advise that they had engaged a 3rd party and were investigating the Complaint. Exhibit 8 entered was a phone message log from OH&S. Notes made by OH&S receptionist in taking a message are consistent with what she told Mr. Tallmadge later. Ms. Schultz was making efforts to keep OH&S informed by email and was updating both WCB and OH&S. Exhibit 9 was a Phone log of a real time conversation with S. Tallmadge. Ms. Tallmadge's notes are consistent with what she recalled. Sharon has a phone log as well but may not have specific notes on what was said.
- g. Sharon Schultz testified that Reports filed by Sheila Denusyik, QC were shared with WCB, OH&S and with the Union, Lucy Figarito:
 - o Exhibit 10 – Letter dated Aug 11. First of Investigation Reports sent to S. Tallmadge. Report contained in the Letter.
 - o Exhibit 11 – Email sent to Tallmadge containing report encompassed in a letter.
 - o Exhibit 12 – Email sent to Tallmadge enclosing second report
 - o Exhibit 13 – Email sending Final report to Tallmadge Aug 28/17

Sharon Schultz was asked if there was any other communication. She answered yes. She commented that it was a very thorough investigation. She was asked about follow through. She would be following through with discipline with the other employees involved who had violated their policy on harassment. Sharon Schultz would be meeting with Employees to discuss her approach with employees. No meetings had as yet taken place.

- o Exhibit 14 – Note on the OH&S file of a conversation dated Sept 6/17 made by S. Tallmadge. The note is consistent with what she was telling him.
 - o Exhibit 15 – chain of emails. S. Tallmadges ask about the Employer's plan. According to the note, Sharon had left a voice mail regarding the plan and asked availability for discussing it.
- h. Regarding sharing of Reports, there was a question of whether Sharon had shared the reports with the Union, Lucy Figarito. It was important to know because of fellow union employees for transparency and whether they were made aware of what the independent investigator had said about Angela's complaint about other employees. Sharon testified she usually does not share the entire report only the last pages with the findings on them. Did she share more in this case than she normally would? Yes.
 - o Exhibit 16 – copy of email to L.F. attaching Part 1 of the Report.

- Exhibit 17 – copy of email to L.F. attaching Part 2 of the Reports.
 - Exhibit 18 – copy of email to L.F. attaching Part 3 of the Reports
 - Exhibit 19 – copy of email to L.F. attaching Part 4 of the Reports
- j. Shannon Whyley asked Sharon Schultz why was she sending Reports to Lucy rather than sending to Appellant and to the local Union rep. Sharon stated that Lucy was in charge of the file at that time. Lucy requested that Sharon communicate directly with Lucy and she would communicate with Angela. The Privacy Policy in Handbook – Page 20 - states that all personal information in the personnel file is considered as “personal information” and it is all private so is not available to all. This case was not treated differently from other cases. The attention that this case required was given though the 3rd party investigations. Reports were thorough, and they moved forward from that point. The Union through Lucy F had no objections and/or questions and they considered it finalized.

29 **Cross Examination of Sharon Schultz by Respondent’s Representative, Dawn McBride**

- a. Ms. McBride referred to Policy Handbook on P. 14. She stated that the provisions prevented the Employer from transferring the Employee. The Saskatchewan Employment Act also prevents the Employer from transferring the employee. She asked what did Sharon Schultz offer to Ms. Mongovius other than relocation? Could she have offered scheduling to make sure Angela did not work with the supervisors? Sharon said she did not put her mind to this. There were many Employees. Sharon stated she offered Angela to go back to work at the Store. Angela said, you are going to put me back there? Ms. Mongovius’ complaint is regarding what Sharon did and did not do regarding the complaint she lodged. Ms. Mongovius is on Worker’s Compensation Board benefits. It is agreed that she did suffer an injury at work. Dawn McBride stated that 1 year on WCB is a significant injury. Ms. Schultz did not agree that it was significant.
- b. Sharon Schultz says that she has a plan in place to provide a harassment free workplace. She said in an email on Sept. 6 that she had a plan in place. At that time she had not dealt with the harassers. The OH&S Officer did not appear to ask what the discipline was going to be. When asked when the discipline took place Sharon doesn’t remember when she did the discipline. There is no note in the file calling OH&S back to say what she did do. Dawn McBride asked whether on Sept 6 was she putting the plan into place or intending to do it.
- c. One of the recommendations was to have a meeting with the supervisors. She verbally discussed this with Lucy and the offer was refused. Sept. 6 - Sharon is not sure whether she had taken disciplinary steps. In 4 days Shawn Tallmadge, the OH&S officer, sent a followup letter that deemed that she had taken the steps and he was finalizing the file. There was no further communication from Sharon to him that she had done what she had planned to do.
- d. Dawn McBride stated that at this point, WCB has not cleared Angela for return to work. Sharon’s duty is to provide Angela with a harassment free workplace. She would be putting Angela in the store to work with 2 supervisors who she complained about. Ms. McBride asked what steps have you put in place or would put in place to make sure harassment doesn’t happen? Ms. Schultz stated there would be a

meeting between the manager and the Employee to set out the conditions for return to work. Where there is an out-of-scope manager they can be terminated if they continue with the same behaviour. Ms. McBride asked if there a provision for oversight of the situation? Ms. Schultz responded No. Ms. McBride asked did you communicate with Angela or with the union about the plan? Ms. Schultz stated I don't recall about the union, but did not communicate with Ms. Mongovius.

30 Closing Argument by Appellant's Representative, Dawn McBride

The Issue has always been with the OH&S Officer rather than the Employer. He states in the Harassment Confidential Questionnaire that the OHS Division has few rights to take action. Also regarding his decision dated September 12, 2017 the Union's position is that the Employer did what they were supposed to do by conducting the independent investigation. The OH&S Officer had a duty to ensure that the workplace is going to be free from harassment. Laws are there so Employees should not be punished when they complain and so that they can go back to their workplace. There needs something to assure them that they will be protected when they go back to work. Most important is the OH&S Officer's note Tab 9 suggests that things will be done but had not been done. Also the note May 6, 2017 supports there would be discussion but there was no further communication before he gave his concluding letter. This violates the OH&S' responsibility for workers to be free from injury at work. His role should have been to put the file on hold and wait until the steps were taken by the Employer. Then he should have followed up. He was accountable to the worker for checking to see if the action planned by the Employer had been done. He was also responsible to be sure that the Employee was returning to a healthy workplace free from harassment.

31 Review of Brief of Law Submitted by Respondent's Representative, Shannon Whyley

There are aspects in the Brief of Law submitted by the Respondent that may not be relevant given the Appellant's Closing Argument.
Those aspects that are relevant are:

- This is an appeal of the findings of the OH&S Officer in concluding the file.
- Regarding the Reports on the Independent Investigation there is evidence submitted by the Employer that the reports were shared with the Union.
- The Respondent's position is that the Employer fulfilled all its obligations in dealing with the harassment.
- The Respondent is opposing the appeal because it affects the parties involved. The Employer has done considerable work to deal with the complaints.
- The decision itself was correct and should stand.

Page 3 of the Brief of Law submission states the issues that the Respondent is putting forward. "The Saskatoon Co-op submits that the following issues arise in this hearing:

- (a) What is the role of an OHS officer in harassment complaints?
- (b) Did the OHS Officer provide sufficient reasons?

(c) Did the Saskatoon Co-op meet its duties and obligations under the SEA and OHS Regulations?

(i) Is the Saskatoon Coop under a statutory obligation to inform Ms. Mongovius of the specific recommendations and steps it has taken following a finding of harassment?

(ii) This section has been dropped.

Paragraph 14 summarizes the definition of harassment.

Reference to the role of the OH&S Officer are of some relevance in paragraph 15.

Paragraph 17 Page 9 sets out the Employer's obligations with respect to having a harassment policy in place. There is no issue in this case as to whether the Employer's Harassment Policy was adequate or not.

Pages 11 and 12 set out of the role of the OH& Division as stated in the Harassment Confidential Questionnaire in reviewing the complaint.

There is no power to do anything more than enforce the Act – that is compliance in having a policy in place. It is the legislation and powers that the Employer and OH&S Officer have to work within.

32 Final Submission by Respondent's Representative

The OH&S Officer did what he was required to do regarding this investigation. He was satisfied that the Employer was fulfilling its duty. There is no legislation that requires he has an ongoing duty to follow up. He just needs to be satisfied that those things had been done.

- The letter is sufficient to explain why the OH&S Officer did what he did.
- Statutory Obligations by the OH&S Officer are:
 - o Even if everything was not perfect, there is nothing more to be gained from further action.
 - o There is no statutory obligation to provide information to the Union by the respondent. The Employer was being very candid and released information about what it was required to do.

-There is no reason for overturning the decision of the OH&S Officer.

32 Appellant's Response to Final Submission

- The OH&S Officer should not have assumed that Sharon Schultz's verbal report on the phone May 6th, 2017 was a statement that the Employer's role had been completed. He did not make certain that everything had been done.

- The Appellant is not arguing any matters relating to the harassment as that matter was dealt with in the Investigation Reports, and not part of the subject of this appeal.

- Compliance regarding what was planned by the Employer was not assured so the OHO did not fulfil his duty.

V. ANALYSIS

34 Issues:

The issues before me are as follows:

1. What is the role of the OHS officer in harassment complaints?
2. In rendering his decision is the OHO required to communicate to the person who filed the harassment complaint the 'recommendations' and 'steps' communicated to him by the Employer on which the OHO based his decision to deny the complaint?
3. Did the Saskatoon Co-op meet its duties and obligations under the *SEA* and *OHS Regulations*?
 - (i) Is the Respondent under a statutory obligation to inform the Appellant and the Respondent of the recommendations and steps it has taken following a finding of harassment?
 - (ii) Should the release of private employer disciplinary information be ordered absent a statutory duty to disclose?

35 Issue 1 - Role of the OHS Officer in Harassment Complaints

Under *SEA* sections 3-38(1) and (2) that relate to the role of the OHS Officer are as follows:

- 3-38 (1) An occupational health officer shall act pursuant to subsection (2) if the occupational health officer is of the opinion that a person:
- (a) Is contravening any provision of this Part or the regulations made pursuant to this Part; or
 - (b) Has contravened any provision of this Part or the regulations made pursuant to this Part in circumstances that make it likely that the contravention will continue or will be repeated.

In the conversations that the OHO had with Sharon Schultz on and the information and Reports that were provided by the Employer regarding progress on the Investigation of the Complaint, the OHO it appeared from his notes on the conversation with Sharon Schultz on September 6, 2017 that the OHO was confident that the contraventions would not continue or be repeated. He stated in his decision:

“The conclusion of the investigation was that the Harassment was substantiated in certain circumstances and not in others. Further the employer has stated that there will be follow up from the investigator’s recommendations and information/documentation provided, indicates the steps taken to address each of the complaints brought forward by Ms. Mongovius.”

Therefore, the OHO did carry out the limited role set out in legislation. He was satisfied that the Saskatoon Co-op would take action to stop the harassment and prevent a recurrence.

36 Issue 2 - Sufficiency of Reasons

Ms. Mongovius has stated in her Notice of Appeal:

I am appealing this decision for a number of reasons, but specifically because the decision to deny the complaint based on 'recommendations and 'steps' that have not been communicated to me or to my Union is wrong."

Although Ms. Mongovius stated that she was appealing the decision for a number of reasons, she did not state what those other reasons were. She had narrowed the scope of her appeal to the issue of communication regarding the 'recommendations' and 'steps' between the OHO and the parties involved. The parties to this appeal agreed that the complaints of harassment were not being questioned. Therefore the Adjudicator is limited to making a determination as to whether Ms. Mongovius' appeal should be granted or dismissed based on only the lack of communication with the Appellant. The Respondent was communicating with the OHO, providing copies of the Investigation Reports the Employer received from the Investigator. There was action being planned by the Respondent which was communicated to the OHO; however, neither she nor her Union were provided with that information.

The decision by the OHO regarding the Appellant's claim was delivered in the letter dated September 12, 2017:

"It is our determination that the employer conducted an investigation into the allegation brought forward by Ms. Mongovius and worked diligently to resolve this matter in the best interests of all parties affected. The conclusion of the investigation was that the harassment was substantiated in certain circumstances and not in others. Further, the employer has stated there will be follow up from the investigator's recommendations and information/documentation provided, indicates the steps taken to address each of the complaints brought forward by Ms. Mongovius."

The letter dated September 12, 2017 was, according to evidence presented, based on a telephone call received by the OHO from Sharon Schultz on September 6, 2017. The OHO made notes on the contents of the conversation which was included in the file received from the Director of Occupational Health and Safety. The notes read:

- " – will be dealing with harassers
- following investigators recommendations as far the report goes.
- can't return Angela- WCB
- discussed finalizing file
- Sharon will let me know more information when they finalize"

The notes indicated actions that would be taken in the future by the employer based on the Investigation Reports by Ms. Denysiuk, not what had already been done. The employer had not dealt with all the "recommendations" and "steps" in the Investigation

Report; however there was a plan communicated to the OHO to address the harassment occurring.

The information contained in the OHO's letter provided Ms. Mongovius with the information that the OHO had considered in reaching his decision which was the investigations, and the assurances from the Employer that there would be follow up to those investigations. Therefore, the OHO provided sufficient reasons as to the basis for his decision to deny her complaint.

37 **Issue 3 – Employer's duties and obligations under the *SEA* and *OHS Regulations***

This last issue raised by the Respondent was 'Did the Saskatoon Co-op meet its duties and obligations under the *SEA* and *OHS Regulations*? '

- a. Is the Respondent under a statutory obligation to inform the Appellant and the Respondent of the recommendations and steps it has taken following a finding of harassment?

Under *OHS Regulations* 38(1)(d) and (i) there are no legislative requirements that the corrective action taken be disclosed to the complainant or to the complaint's union. Only the results of the Investigation are required be disclosed. The Saskatoon Co-op met its statutory obligation to disclose the *results* of the investigations by providing the information to Ms. Mongovius through her union. Investigation Reports were provided in full to the Union representative although they were not required to be.

- b. Should the release of private employer disciplinary information be ordered absent a statutory duty?

The "recommendations and 'steps' related to disciplinary action to be taken against other employees. That would be disclosure of personal information. The Saskatoon Co-op is a private corporation. The Co-op has a Privacy Policy that personal information would not be disclosed without consent of the party involved except where required by law. Employees have an expectation that the Saskatoon Co-op would follow the privacy policy. As there was no legal requirement to release the information it would have been deleterious to the employer/employee relationship in regards to the affected employees and the rest of the workforce.

VI. Conclusion

- 38 As stated above in Article 36 although Ms. Mongovius stated that she was appealing the decision of the OH for a number of reasons, she did not state what those other reasons were. The Appellant based her appeal on the narrow position that the OHO denied her complaint on steps and recommendations that had not been communicated to her or her Union. As set out above, the Respondent's Privacy Policy prevented the personal information of other employees from being disclosed.

The appeal is therefore denied.

Dated at Gull Lake, Saskatchewan this 17th day of June, 2019.

ME Weston

Marlene Weston, Adjudicator