

LRB File No. 123-21

IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR PURSUANT TO SECTION 3-56 OF THE
SASKATCHEWAN EMPLOYMENT ACT

BETWEEN

LOBLAWS INC.

APPELLANT

- and -

OCCUPATIONAL HEALTH AND SAFETY DIVISION

RESPONDENT

Adjudicator: Larry B. LeBlanc, Q.C.
Counsel for the Appellant: Steven J. Seiferling
Counsel for the Respondent: Alyssa Phen



DECISION

Introduction

1. This is an appeal by the Appellant, Loblaws Inc., pursuant to section 3-56 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (the "Act"), from a decision of the Director of Occupational Health and Safety (the "Director") dated September 13, 2021, which affirmed the report of an occupational health officer (the "Officer") identified as Officer Report Number 1-00016440 (the "Report") arising out of an inspection conducted by the Officer on June 17, 2021, at the Appellant's Real Canadian Superstore #1582 in Yorkton, Saskatchewan.
2. In the Report the Officer stated, "We discussed the employer's responsibilities and requirements regarding a harassment policy and process as well as the violence policy that was noted in the same document with harassment and should be a separate policy".
3. The Report then directs the Appellant to "amend your harassment and violence policies to ensure all elements of the legislation provided below are included". Those various elements (consisting of definitions and statutorily required provisions for the respective policies) are set out in the remainder of the Report.
4. The Report does not clearly specify the nature and extent of the noncompliance found by the Officer. However, the parties have provided as follows in an Agreed Statement of Facts and Exhibits filed with me:

The parties agree that the only issue raised by the Report, and the only issue to be determined by the Adjudicator, is whether the Act requires harassment and violence policies to exist in separate documents.

5. In affirming the report, the Director found that the legislation, properly interpreted, requires that violence and harassment policies be contained within separate documents. The Appellant disagrees.

Facts

6. The Agreed Statement of Facts and Exhibits presented by the parties states as follows:

...

1. Real Canadian Superstore #1582 ("Superstore") is a grocery store offering several services, including grocery sales, housewares sales, pharmaceutical dispensing and the sale of alcoholic beverages, located at 206 Broadway Street East in Yorkton, Saskatchewan.
2. On June 17, 2021, Occupational Health Officer Shawn Tallmadge ("Officer Tallmadge") attended the Superstore location and conducted an unannounced inspection of the premises. This inspection included meeting with the Store Manager, Bill Nathaniel ("Mr. Nathaniel"), to review the store's harassment and violence policies (Appendix "A") (the "Policies"). Officer Tallmadge noted that the Policies were contained in one document, and not in separate documents.
3. Upon review of the aforementioned policies, Officer Tallmadge noted (Appendix "B") that they did not meet the requirements of the *Saskatchewan Employment Act* (the "Act") or the *Occupational Health and Safety Regulations, 2020* (the "Regulations") as the violence policy and harassment policy were combined in one document. Officer Tallmadge pointed out the issue to Mr. Nathaniel and they discussed the employer's responsibilities and requirements under the Act and Regulations.
4. In Officer Report Number 1-00016440 (Appendix "C"), Officer Tallmadge noted the basis of his finding that as section 3-25, Harassment, and section 3-26, Violence, are separate sections in the Regulations, they require separate policies. As such, Superstore's harassment and violence policy did not meet the requirements for violence policies under section 3-21 of the Act.
5. The parties agree that the only issue raised by the Report, and the only issue to be determined by the Adjudicator, is whether the Act requires harassment and violence policies to exist in separate documents.
6. The parties retain the right to present evidence to supplement the statements made in this Agreed Statement of Facts, at the hearing of this matter.

7. The harassment and violence policies in question appear as Appendix "A" to the Agreed Statement of Facts and Exhibits. Given the narrowly stated issue required for my determination, an examination of the various provisions is not necessary nor was one undertaken in argument by the parties at the hearing. Let me note, however, that the Appendix consists of a cover page plus 24 numbered pages described as a "Violence Risk Assessment & Prevention Program", followed by five unnumbered pages (in more of a pamphlet or brochure format) headed up "Violence, Harassment and Discrimination Policy".
8. In addition to the facts set out in the Agreed Statement of Facts and Exhibits, the parties agreed at the hearing, without the necessity of calling a witness, that the Appellant's harassment and violence policies are uniformly contained in one document (appearing in this case as Appendix "A") that has been developed and is used by the Appellant across Canada in all jurisdictions.

Legislative Provisions

Harassment Policy

9. Employers and supervisors are required by sections 3-8(d) and 3-9(c) of the Act to ensure, insofar as is reasonably practicable, that workers are not exposed to harassment (as more particularly set out in those respective provisions). The term "harassment" is defined in section 2(l) of the Act.
10. Under *The Occupational Health and Safety Regulations, 2020* RRS c. 15.1 Reg 10 (the "Regulations"), an employer, in consultation with the applicable occupational health committee, is required by subsection 3-25(1) to develop a policy in writing to prevent harassment, which policy is to include provisions satisfying various requirements itemized in clauses (a) to (j).
11. Subsection 3-25(2) of the Regulations requires an employer to implement the harassment policy developed pursuant to subsection (1) and "post a copy of the policy in a conspicuous place that is readily available for reference by workers".

Violence Policy

12. Subsection 3-21 (1) of the Act provides that an employer operating at a prescribed place of employment where violent situations have occurred or may reasonably be expected to occur shall develop and implement a written policy statement and prevention plan to deal with potentially violent situations after consultation with the occupational health committee, the occupational health and safety representative, or the workers if there is no committee or representative.

Subsection (2) provides that the policy statement and prevention plan must include any prescribed provisions. (The term “prescribed” is defined in section 1 of the Act as meaning prescribed in the regulations made by the Lieutenant Governor in Council.)

13. In the Regulations, section 3-26 (among other things) defines “violence” and lists services or activities that are prescribed for purposes of subsection 3-21(1) of the Act including pharmaceutical dispensing services and the sale of alcoholic beverages thus capturing the location in the present case.
14. Section 3-26 further provides that a policy statement and prevention plan required by subsection 3-21(1) of the Act must include provisions satisfying various requirements itemized in clauses (a) to (i) of subsection 3-26(3) of the Regulations.
15. In addition, pursuant to subsection 3-26(5) of the Regulations, “An employer shall make readily available for reference by workers a copy of the policy statement and prevention plan required by subsection 3-21(1) of the Act”.

Principles of Interpretation

16. Section 2-10 of *The Legislation Act*, S.S. 2019, c. L-10.2, drawing on an often-repeated passage from the decision of the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, speaks to the interpretation of enactments as follows:

- (1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.
- (2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

17. In *Ballantyne v. Saskatchewan Government Insurance*, 2015 SKCA 38, at para 20, the Court of Appeal provided the following further direction:

[20] In *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 28-29, Ruth Sullivan sets out three propositions that apply when interpreting the plain meaning of a statutory provision:

1. It is presumed that the ordinary meaning of legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must take into account the full range of relevant textual considerations including purpose, related provisions in the same

and other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.

3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation adopted is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.
18. The purpose of occupational health and safety legislation has been described by the Saskatchewan Court of Queen's Bench as "to promote and maintain the highest degree of physical, mental and social well-being of workers in the province and to prevent harassment, injury or ill health stemming from the work environment (*Milner Greenhouses Ltd. v. Saskatchewan*, 2004 SKQB 160 at para 9).
19. There was no disagreement at the hearing on the principles of statutory interpretation, but there was on their application.

Determination of the Point in Issue

20. In a conference call approximately two months before the hearing, the parties agreed that the appeal would be conducted by way of a *de novo* hearing and that the Respondent would proceed first. Although no *viva voce* evidence was called as it turned out, counsel for the Respondent presented argument first, consistent with that agreement.
21. The interpretation advanced by the Respondent is rooted in an analysis stated as follows in the Respondent's written submission:

The Director's view is that the ordinary meaning of section 3-21 of the Act and sections 3-25 and 3-26 of the Regulations stipulate two discrete obligations for an employer to create two discrete policies. When one reviews the legislation in its grammatical and ordinary sense, the reader impression that harassment and violence policies are separate distinct policies with different prescribed requirements.
22. But does it follow from an analysis along the above lines that, as is the Respondent's bottom line interpretation, the two policies with different prescribed requirements cannot be housed in the same document? This stretches the interpretation too far on my reading.
23. The Appellant in arguing that there is no requirement for harassment and violence policies to exist in separate documents notes the absence of any provision that would prevent them from being contained in the same document, submitting in its brief:

... what we do not see in any of the sections of the Act or Regulations is a restriction, or prohibition, saying that the harassment policy cannot be combined with the violence policy, or the violence policy cannot exist in the same document as the harassment policy.

24. I agree that additional language would be required in the legislation, whether in the form of a restriction or prohibition as suggested above or otherwise, to support the Officer's decision.
25. In my view, giving the words of the Act and Regulations their ordinary meaning, it is permissible for harassment and violence policies to exist in a single document, provided that legislated requirements are met for each policy and that the document is in a form whereby the content of each policy may be said to be "readily available for reference by workers".
26. As an additional line of argument for its position the Appellant relies upon its use in other jurisdictions of the same cross-Canada document that was found to be non-compliant in Saskatchewan. The Appellant notes that under the *Canada Labour Code* and its regulations the concepts of harassment and violence are combined into a single definition and that there is a requirement for each workplace to have a harassment and violence prevention policy.¹ More relevant may be the use of the Appellant's document in jurisdictions with legislation more comparable to Saskatchewan's, which appears very generally to be the case for three jurisdictions in respect of which Appellant, as discussed during argument, followed up with a high-level summary of applicable legislative provisions (Alberta, Ontario, and British Columbia).
27. Further to this and worthy of note are commentaries in Alberta and Ontario (each of whose legislation refers separately to harassment and violence policies and requires conspicuous posting or ready availability of each policy for reference by workers²) which contemplate the potential combination of harassment and violence policies into one document if there is compliance with all requirements for each. These commentaries are supportive of the Appellant's position. See:

- Government of Alberta publication "Harassment and Violence in the workplace – OHS information for employers, supervisors and workers" contained on the website open.alberta.ca, at p. 4:

Flexibility – it's your worksite

¹ *Canada Labour Code*, R.S.C. 1985, c. L-2, section 122(1), and the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130

² In Alberta, the *Occupational Health and Safety Act*, c. O-2.2, sections 1, clauses (n) and (rr), and 55, and the *Occupational Health and Safety Code*, Alberta Regulation 191/2021, sections 390(1) and (4). In Ontario, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, section 1 (definitions) and sections 32.01 to 32.06.

An employer may organize information for the harassment and violence prevention policies and procedures in a manner that suits the organization. For example, the employer may combine the two prevention policies into one document. The OHS legislation establishes general principles along with specific provisions. As long as all the legislative requirements are met an employer has flexibility.

- Ontario Ministry of Labour, Immigration, Training and Skills Development paper, "Workplace Violence and Harassment: Understanding the Law", available on the Ministry's internet website and from Service Ontario Publications, at pp. 13 and 27:

Can the workplace violence policy be combined with other policies?

Yes, as long as all the requirements for the policies are complied with. Employers may choose to combine the workplace violence policy with a policy required by the Act for workplace harassment or occupational health and safety.

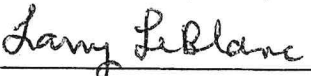
Can the workplace harassment policy be combined with other policies?

Yes, as long as all the requirements for the policies are complied with. Employers may choose to combine the workplace harassment policy with another policy, such as anti-harassment or anti-discrimination policy based on the criteria for harassment in Ontario's Human Rights Code.

Conclusion and Order

28. The issue I am asked by agreement of the parties to determine is whether the legislation requires harassment and violence policies to exist in separate documents.
29. My determination is that there is no such requirement and that it is permissible under the legislation for harassment and violence policies to exist in a single document, provided that legislated requirements are met for each policy and that the document is in a form whereby the content of each policy may be said to be "readily available for reference by workers".
30. The Agreed Statement of Facts and Exhibits assumes that the determination of the stated issue is dispositive of the appeal. Accordingly, pursuant to section 4-6(1) of the Act, the appeal is allowed. Officer Report Number 1-00016440 and the decision of the Director affirming that Report are set aside.

Dated this 2nd day of September, 2022



Larry B. LeBlanc, Q.C., Adjudicator