



As of  
2013

*At Issue:*

## Reprisal – Terminating for Harassment Complaints

James Heeneey recently successfully represented numerous complainants in their allegations against senior faculty within the business school at McMaster University. The decision resulted in the discipline of six professors, including the suspension of five.

Although Bill 168 became law in June 2010 and we have assisted both employers and employees with related issues on numerous occasions since then, the case law on this area of the law has been slow to develop. A recent decision of the Ontario Labour Relations Board (“OLRB”) clarifies that a decision to terminate an employee because he or she has brought forward a harassment complaint can constitute reprisal and may attract the consequences of section 50 of the *Occupational Health and Safety Act* (“OHSA”).

Dec. 11,  
2013

Mr. Ljuboja, the Applicant, had been employed in a managerial position by the Respondent AIM and was contracted to work at General Motors. He was employed pursuant to a series of fixed term contracts. Due to the injury of one of his workers and the arrangements made to accommodate that worker’s return to work, there was a staff shortage which resulted in workers taking washroom breaks without anyone available to cover for them. One of Mr. Ljuboja’s direct supervisors became upset that the team was short staffed and that washroom breaks were permitted without coverage. As a result, he proceeded to scream and swear at Mr. Ljuboja in a meeting. The following day, Mr. Ljuboja was called into a meeting with his supervisors where he was accused of having an attitude problem and causing the fight.

James Heeneey will be speaking at the 2013 Year End HR Law Review.



Mr. Ljuboja reported the incident to Human Resources and advised them that he feared for his safety and the safety of others in the workplace. He was assured that there would be no reprisal against him for making the complaint. Mr. Ljuboja filed a formal complaint with Human Resources.

Feb. 19,  
2014

Shortly after the incident, Mr. Ljuboja’s contract was up for renewal. However, two weeks before the contract was to be renewed, he was terminated and was not permitted to complete the two remaining weeks on his contract. Mr. Ljuboja alleged that he was terminated, at least in part, due to the fact that he made a complaint about his supervisor’s harassment that this constituted a reprisal contrary to section 50(1) of the *Occupational Health and Safety Act* (“OHSA”).

Sarah Vokey will be speaking on "Making a Finding and Preparing an Investigation Report" at the Osgoode Certificate in Labour Law.



The Vice-Chair held that the OHSA does not provide workers with a right to a harassment free workplace nor does it place an obligation on employer to provide a specific outcome of the harassment complaint. The obligation on employers regarding harassment is strictly procedural (ex. develop processes, policies and programs). However, employers may not terminate employees for bringing forward complaints under the procedures that the OHSA requires them to create. The Vice Chair also confirmed that the OLRB is not the appropriate forum to adjudicate the substance of harassment complaints.

