



Taylor McCaffrey^{LLP}
Barristers & Solicitors

Domestic Violence: Out of the Home and Into the Workplace

Jamie Jurczak and Peter Mueller

Domestic Violence: Out of the Home and Into the Workplace

- ❖ **From the Headlines**
- ❖ **Legislative Changes**
- ❖ **Case Law Example**
- ❖ **Due Diligence Tips**

From the Headlines

- ❖ **Winnipeg October 30, 2015: Camille Runke found dead, having been shot to death outside her workplace by her estranged husband, Kevin Runke**
- ❖ **She had recently separated from Kevin in June 2015**

From the Headlines

- ❖ **From July 2015 – October 2015, Camille reported 22 incidents of harassment and stalking to police**
- ❖ **Kevin's conduct included:**
 - **vandalizing vehicle**
 - **following to work**
 - **tapping phone lines**
 - **nails scattered around parked truck and on route to work**

From the Headlines

- ❖ **Camille changed her route to work, got rides to work from others, installed security cameras**

From the Headlines

- ❖ **How was Camille's workplace a factor in this case?**
 - **Kevin knew where she would be located and her normal route to work**
 - **Findings post-investigation suggested that, in order to facilitate killing Camille, Kevin may have duct-taped the key pad used to enter her workplace to stop her from entering the building**

Domestic Violence (DV) at Work

- ❖ **Camille Runke's tragic experience underscores the reality that Domestic Violence (DV) can spill into the workplace**

Domestic Violence (DV) at Work

- ❖ Reinforced by Canada's first-ever report on DV in the workplace, released November 2014: *Can Work be Safe, When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*

Survey Details & Findings

- ❖ 8,429 people surveyed
- ❖ 38% said DV impacted their ability to get to work (on time or at all)
- ❖ 50%+ who'd experienced DV said at least 1 abusive act happened at or near work
- ❖ 40.6% said abusive acts = abusive phone calls or texts
- ❖ 20.5% said abusive acts = stalking or harassment near work

Ontario - OHSA

- ❖ Survey notes that Ontario was the first jurisdiction to explicitly refer to DV in its OHS legislation
- ❖ What does Ontario's OHSA say?

Ontario - OHSA

- ❖ **32.0.4: If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.**

Ontario - OHSA

- ❖ DV is not defined
- ❖ Employer's obligation can be triggered where Employer doesn't have *actual* awareness, but ought reasonably to be aware that DV would likely expose a worker to physical injury
- ❖ "Worker" may include workers other than the victim experiencing DV directly

DV Outside of Ontario

- ❖ To date, Ontario remains *only* jurisdiction with *explicit* mention of DV in OHS law
- ❖ Note that Survey says that Manitoba amended its OHS laws to explicitly reference DV – this is not true
- ❖ Bill 219 sought to make such an amendment, but never became law

DV Outside of Ontario

- ❖ Given that ON is the only jurisdiction with explicit DV provisions, some employers outside of ON might believe that they don't have any OHS obligations in relation to DV issues
- ❖ **This isn't necessarily the case...**

DV Outside of ON

- ❖ **At least three avenues by which employer obligations related to DV may arise:**
 - **OHS general violence provisions**
 - **OHS general employer duty provisions**
 - **non-OHS laws**

OHS General Violence

- ❖ **OHS laws may not say “DV”, but many do refer to “violence” and impose obligations regarding the prevention of violence at work**
- ❖ **Definitions of “violence” can be broad enough to capture DV**

OHS General Violence

- ❖ **Examples of “violence” defined:**
 - **BC** - the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.
 - **MB:** the attempted or actual exercise of physical force against anyone, or any threatening statement or behaviour that gives a person reason to believe that physical force will be used against them.
- ❖ **Broad enough to capture instances of DV spilling into the workplace**

OHS General Duties

- ❖ All OHS laws (except Yukon) impose a general duty on an employer to ensure the safety of their workers at work
- ❖ Extremely broad
 - E.g. Where there's an imminent risk that an employee's disgruntled partner will attend the workplace, this would likely trigger the general duty clause, imposing positive obligations on the employer

Non-OHS Laws

- ❖ There are some legislative developments that may not appear at first glance to impose DV-related OHS duties on employers, but they may have just that effect
- ❖ Bill 8 introduced in MB Legislature on November 25, 2015, making amendments to Manitoba's *Employment Standards Code* (i.e. *not* OHS law)

Manitoba Bill 8

- ❖ **Bill 8 introduces DV Leave**
- ❖ **DV means:**
 - (a) an intentional, reckless or threatened act or omission that causes bodily harm or property damage;
 - (b) an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or property damage;
 - (c) conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse;
 - (d) forced confinement;
 - (e) sexual abuse.

Manitoba Bill 8

❖ DV means:

❖ *caused by an act or omission of another person who:*

- (a) is cohabiting or has cohabited with him or her in a spousal, conjugal or intimate relationship;
- (b) has or had a family relationship with him or her, in which they have lived together;
- (c) has or had a family relationship with him or her, in which they have not lived together;
- (d) has or had a dating relationship with him or her, whether or not they have ever lived together; or
- (e) is the other biological or adoptive parent of his or her child, regardless of their marital status or whether they have ever lived together.

Manitoba Bill 8

- ❖ Any employee wishing to take DV leave must give his/her employer as much notice as is reasonable and practicable in the circumstances

Manitoba Bill 8

- ❖ **DV leave may be taken only for one or more of the following purposes:**
- ❖ (a) to seek medical attention for the employee or the employee's child in respect of a physical or psychological injury or disability caused by the domestic violence;
- ❖ (b) to obtain services from a victim services organization;
- ❖ (c) to obtain psychological or other professional counselling;
- ❖ (d) to relocate temporarily or permanently;
- ❖ (e) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence;
- ❖ (f) any other prescribed purpose.

Non-OHS Laws

- ❖ **While Bill 8 and DV leaves in MB do not expressly impose any OHS-like obligations on MB employers, it fosters an environment where employers may find themselves more aware of DV issues that are affecting their employees, triggering OHS obligations**

Case Law

- ❖ *R. v. Garda Canada Security Corp.* – charged and convicted under the general provisions of Alberta’s *Occupational Health and Safety Act*
- ❖ What happened?
- ❖ How does this relate to DV?

Case Law

- ❖ **Garda entered a guilty plea to Section 2(1)(a)(i) of the *OHSA*:**
 - **2(1) Every employer shall ensure, as far as it is reasonably practicable for the employer to do so, (a) the health and safety of (i) workers engaged in the work of that employer**

Case Law

- ❖ **Garda acknowledged that it had failed to assess the risk at the worksite, which could have led to further action taken to protect the worker**
 - **Nothing prevented access to the construction site by the public**
 - **No communication devices or procedures for a worker to contact assistance in cases of emergency**

Case Law

- ❖ **Garda's penalty – over \$90,000**
 - **fined \$5000 plus a Victim Fine Surcharge of \$750**
 - **ordered to pay \$87,000 to the Southern Alberta Institute of Technology (SAIT) for the development of a hazard assessment education program for working alone**

Case Law

- ❖ **What *could* Garda have done had it adequately assessed the risk?**
 - **requiring the worker to regularly call in;**
 - **providing the worker with a radio; and**
 - **requiring mobile units to attend more frequently.**

Due Diligence Tips

- ❖ As mentioned earlier, MB's Bill 219 never became law
- ❖ But its contents can provide some guidance on DV due diligence

Due Diligence Tips

- ❖ **Bill 219 proposed to impose the following obligation on employers:**
 - **If an employer becomes aware, or ought reasonably to be aware, of domestic violence that would likely expose a worker to physical injury or harassment in the workplace, the employer must take every precaution reasonable in the circumstances for the protection of the worker, which may include...**

Due Diligence Tips

- ❖ (A) displaying domestic violence prevention posters, brochures, stickers and resource lists in a conspicuous place in the workplace;
- ❖ (B) distributing a statement that expresses that the employer does not support any acts of violence in the workplace including domestic violence;
- ❖ (C) inviting community service providers to provide sessions on domestic violence to workers, supervisors and managers;
- ❖ (D) training workers, supervisors and managers to recognize and respond to signs of domestic violence;
- ❖ (E) preparing an emergency security plan, including procedures for contacting police when workers observe a person engaging in violent behaviour in the workplace; and
- ❖ (F) exploring options for voluntary relocation of the victimized worker, and options to prevent the worker from having to deal with harassing electronic communications of any type, including telephone calls, emails, faxes and text messages.

Due Diligence Tips

- ❖ **Develop a prevention plan that provides:**
 - **confidential reporting of DV issues;**
 - **employee training/education re: DV;**
 - **steps employer will take upon become aware of DV issue;**

Due Diligence Tips

❖ Minimize risk of DV at work

- develop policies for time off, extended leave, workplace relocations
- create hotline for reporting
- develop and implement DV prevention training
- ensure that DV policy/program includes:
 - emergency response;
 - reporting procedures;
 - police notification;
 - door security;
 - emergency contact numbers pre-programmed;
 - panic buttons; and
 - code words.

Questions?

Contact Jamie

phone: 204.988.0393

email: jjurczak@tmlawyers.com

Contact Peter

phone: 204.988.0316

email: pmueller@tmlawyers.com

Thank You!