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CBC Could Be Forced To Pay Significant Damages

If Allegations Ghomeshi Harassed Staff Are Proven True: Legal Expert

By Susanna Kelley

The CBC could be forced to pay significant financial damages to staffers who worked for its show "Q" if allegations they were harassed by former host Jian Ghomeshi are proven true, according to experts in labour and employment law.

While making it clear she could not comment on the Ghomeshi/CBC case in particular, prominent management side labour and employer lawyer Erin Kuzz noted all employers have an obligation to provide a safe working environment and there are penalties for not doing so.

"Employers have an obligation to take all reasonable steps to protect workers from both workplace violence and harassment," said the lawyer with Sherrard, Kuzz LLP.

At least three women have come forward to say they were subject to "sexually aggressive or abusive behaviour" from Mr. Ghomeshi while working on Q, the radio show he hosted, according to a [CBC News report](#).

In at least one case, the woman reportedly says she complained directly to the Executive Producer of the show, Arif Noorani. Mr. Noorani says no allegations of sexual harassment were ever brought to his attention.

The fact that Mr. Ghomeshi is accused of telling a CBC employee he'd like to "hate-fuck" her, and a second time that he'd like to "grudge-fuck" her could be taken by the employee as a threat of violence against her, said Mark Lewis, a former Vice Chair of the Ontario Labour Relations Board, now General Counsel to the Carpenters' District Council of Ontario.

In addition, the [Globe and Mail has reported](#) that a group of Q staffers went to CBC management to report they worked in a "culture of fear" with Ghomeshi as host.

There are a number of avenues open to those who experience violence or harassment, sexual or otherwise, in a federally regulated workplace.

Those include not only union grievances but redress through the Canadian Human Rights Commission. Courts are another route, as they can award potentially significant damages to any non-unionized employees who claim that a poisoned work environment effectively amounted to the termination of their employment (called "constructive dismissal.") And a complaint could be brought to the Ministry of Labour that an employer failed to protect the health and safety of workers, resulting in potentially significant fines.

"The most significant costs to the employer are likely to come through grievance arbitrations and potential court claims from non-unionized employees. However the Commission also has the ability to award monetary damages for breach of the Canadian Human Rights Act," Ms. Kuzz says.

The Commission usually prefers employees try going through union procedures first, but should the union refuse to file a grievance, the employee can file a complaint with it.

So the union is the first place most CBC employees would usually begin.

Under that route, the employee could ask the union to file a grievance under their collective agreement against the CBC.

However, employers aren't the only ones who have an obligation to employees.

Unions are charged with what is called "the duty of fair representation."

"Unions have an obligation to represent all members of the bargaining union in a manner that is not arbitrary, discriminatory or in bad faith, and that's straight out of the Canada Labour Code," said Ms. Kuzz.

Unions do, however, have the power to decide whether or not to file a grievance, and often make that decision on the basis of its perceived chances of success.

That said, damages won through union arbitrations don't tend to be terribly high - the highest are around \$25,000, but even that is unusual, says Ms. Kuzz.



Management side labour and employment lawyer Erin Kuzz.

Should the union refuse to file a grievance, the employee could file a complaint with the Canadian Human Rights Commission.

It can award individual employees damages of up to \$20,000 for pain and suffering as well as an additional \$20,000 if it finds the employer "willfully and recklessly" breached provisions of the Canadian Human Rights Act such as harassment, sexual or otherwise.

Further, the Commission can also award damages for wages lost from the time the employee left the workplace because of the harassment and when he or she files a complaint with the Commission decision.

And it's not just the employer that can be accused allowing harassment at the Canadian Human Rights Commission: the alleged harasser themselves can wind up being personally named.

Even interns who worked at Q may have some redress.

Some have been quoted anonymously as saying they were sexually harassed by Ghomeshi.

Interns, who are not employees, may be able to make an application to the Commission, alleging sexual harassment, says Ms. Kuzz.

"It is possible that the Commission would treat them as employees because they are providing services," said Ms. Kuzz.

Applications must be made to the Commission within a year of the last incident of harassment.

Then there are the courts.

While some CBC employees cannot sue because they are unionized, the CBC itself can still be liable for court-imposed fines of up to \$100,000, depending on the nature of the offence, should a complaint be lodged with the federal Ministry of Labour, which can then decide to lay charges under the health and safety provisions of Canada Labour Code. However, it must be said that such fines usually do not reach that high.

As for women who did not work at the CBC but who say they were assaulted or sexually harassed, they can go to the criminal court, and perhaps even the civil courts.

Indeed, three women have complained to police, which has sparked a major investigation of Mr. Ghomeshi.

No charges have been laid against Mr. Ghomeshi, who denies any wrongdoing. Nor have any allegations of harassment been proven.

Since the Ghomeshi story broke, much has been made of the fact that very few women who have been sexually assaulted come forward to make a complaint, to police or otherwise.

But Ms. Kuzz still believes women should come forward.

""Absolutely, absolutely, because if that's the kind of workplace environment that exists, that's one of the ways that you can bring about change ... and it's not uncommon for a complaint to be brought and for members of senior management to have no idea of what has happened and to genuinely want to address it."

"Most employers out there are quite responsible and don't want this kind of thing happening in their workplace, if for no other reason than the fact that it creates financial liability."

In Ontario, all three parties are considering a review of labour laws covering employees under provincial jurisdiction.

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