

# What happens to HR After Ghomeshi?

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There are many aspects of the Jian Ghomeshi saga that are newsworthy. There are the salacious, almost tabloid, “Fifty Shades of Grey” glimpses into a public figure’s private life. There are the allegations of abuse perpetrated against multiple women. There is the sense that Ghomeshi somehow used a feminist-sympathizing persona to lure victims. And there are the questions swirling around the CBC as an employer.

Was this highly visible, sizeable Canadian employer, funded in large part by citizens’ tax dollars, delinquent in addressing abuse of power issues within its walls? Is the environment at the CBC such that employees do not feel able to speak up in the case of questionable behaviour? Or, perhaps the most disturbing question being asked: was the CBC unwilling to jeopardize or damage one of its greatest assets in Jian Ghomeshi?

The CBC employs in excess of 5,000 people. Those employees are represented by no fewer than 13 separate unions, in addition to

a sizeable professional and highly regarded Human Resources department. If an organization of this size and structure can fall victim to what can only be termed an HR (and PR) nightmare, how do smaller operations, such as those in construction or trade, avoid such situations? Are they immune? Do small and medium-sized business owners simply not have to worry about these kinds of challenges?

There are several statutes that impact on most Ontario businesses in this area. The Ontario Human Rights Code (“The Code”) prohibits actions

that discriminate against people based on a protected ground, within a protected social area. Protected grounds include age, sex, creed and family status. Protected social areas include employment. The Ontario Health and Safety Act (“OHSA”) is committed to making Ontario’s workplaces safe and healthy. Particularly relevant to this topic is Bill 168, an amendment to the OHSA that was enacted to address violence, bullying and harassment in the workplace, which may or may not involve, directly, any of the protected grounds. It is significant that Bill 168 is part of the OHSA, since

the overall provisions of the OSHA govern it. In particular, under the OSHA, employees have the right to refuse work in the event of an unsafe workplace. Failure to address bullying or abuse allegations under the act could give rise to the refusal to work, in addition to other significant outcomes.

Focusing specifically on the requirements of Bill 168 demonstrates that even very small businesses have substantial duties and requirements. If a business employs five or more people, it must have a policy addressing workplace harassment and violence that is posted in a visible spot, such as a notice board or a common work area, and is updated regularly. The business must have a program that trains staff on the policy, assesses workplace risks and includes a reporting mechanism. Failure to comply with Bill 168 can give rise to penalties assessed to individuals including fines up to \$25,000 and up to 12 months imprisonment. Corporations face fines of up to \$500,000 per incident.

Perhaps more damaging and significant are the PR and operational damages. Press attention to these issues can be very detrimental. In addition, recruiting and employee morale will suffer significantly for a workplace that is not seen to be safe and non-discriminatory.

These issues do not have to be as daunting as they seem. Businesses that are focused on success and growth will be naturally committed to the provision of a healthy and safe workplace; it simply makes good business sense. Translating that commitment into the requisite policies and procedures is a relatively simple matter. The greatest impediment to full compliance in these areas, generally, is a lack of manpower and expertise. Small and medium-sized businesses generally do not have a dedicated, professional HR department or leader.

Consulting with an HR expert is a good investment in terms of risk management, required legislative compliance and

strong management practices. Attending to all of these areas will result in a stronger and more profitable business.

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