



21-2148 Connaught Street
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www.local21.ca

November 11, 2022

An Invitation to Affirm Your Support.

Colleagues/Friends:

On behalf of the Regina Civic Members' Union – CUPE Local 21, we invite you to join with us by affirming the support of your organization in front of the Court of King's Bench (CKB) in an application to quash/overturn a recent and troubling decision from the Workers' Compensation Board (WCB) argued by the City of Regina against a sexual harassment case of a CUPE Local 21 member. We have attached a redacted copy of that decision for your reference.

In short, the City of Regina has argued that instances of discriminatory harassment in the workplace are “workplace injuries,” such that they fall under the exclusive jurisdiction of the WCB. This exclusive jurisdiction applies whether WCB provides you coverage or not, so long as your injury is as a result of a workplace matter. The ultimate implication is that workers should not have access to damages (*nor other monetary remedies*) pursuant to the Saskatchewan Human Rights Code (SHRC). In other words, if as a result of a violation of your Human Rights (based on your gender or gender expression, sexual harassment, racism, your skin colour or country of origin, mental or physical disability and other prohibited grounds) you were actually injured (*physically/mentally*) at work, you cannot seek remedies under s. 40 of the Human Rights Code (*for damages to your dignity/for being humiliated and/or if it was as a result of intentional/willful/reckless conduct*), even by your boss.

This decision has serious implications for all 600,000 workers in Saskatchewan, union and non-union alike. Indeed, the decision of the WCB implies that the special remedies available under the Saskatchewan Human Rights Code are essentially no longer available to any worker of any identity, in any workplace. This is despite the fact that there is currently no mechanism in the *Workers' Compensation Act* to compensate workers for injury to dignity or self-respect, or any of the types of “moral” damages that the human rights legislation was designed to resolve.

If the employer's workplace has had repeated and ongoing instances of discrimination for many years, you will no longer have access to what is known as punitive damages (*for repeated Human Rights violations nor what is known as aggravated damages/moral damages nor any Torts such as mental anguish/negligent or intentional infliction of nervous shock (actual harm)*). In other words, if a Human Rights violation actually causes you harm, the City of Regina has successfully convinced the Saskatchewan Workers' Compensation Board (WCB) to refuse the jurisdiction of the Human Rights Commission and/or your Union to seek those monetary damages. Again, this decision is in spite of the fact that human rights commissions and labour arbitrators have been awarding human rights compensation to workers who suffer discrimination for many decades.

In another case (*that we are waiting for a decision from the WCB on*), the City of Regina has hired a lawyer from **MLT Aikins** to argue that again and additional issues that have further implications (*another case involving Local 21*).

- a. If your Collective Agreement contains benefits that are better than the Saskatchewan Workers' Compensation Board (WCB) such as wage top up if you are on Worker's Compensation Board (WCB) or perhaps disability income protection from workplace injuries for lost wages until retirement, etc. are you prevented from enforcing them because that is exclusively up to and limited by the Workers' Compensation Board (WCB) and its Act?
- b. Similarly, are you able to bargain benefits that are better than the Workers' Compensation Board (WCB) and its Act could provide or are those topics now banned from the bargaining table?



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- c. Similarly, if you have bargained them, are they now illegal?
- d. The City of Regina also has a Policy against harassment including on the basis of prohibited grounds that has in its Policy a special note that says that this Policy does not in any way interfere with an employee's right to seek remedies under the Saskatchewan Human Rights Code (*SHRC*), etc.

This Policy may become unenforceable by any City of Regina employee who was given this promise in this Policy – a Policy which every employee and every out-of-scope person is taught to respect and enforce. Is this now no longer the truth and now a false promise etc.?

We are not asking individual Locals to intervene but rather do one of two things:

1. Write us and affirm that your organization stands with us in overturning this decision
2. Help us fill the gallery on the day of the application if able

Below is a list of organizations that have answered this call to action so far as interveners:

- Amalgamated Transit Union Local 588
- International Association of Fire Fighters Local 181
- Canadian Union of Public Employees Local 7
- Canadian Union of Public Employees Local 21
- Regina Civic Middle Management Association
- Saskatchewan Joint Board, Retail, Wholesale and Department Store Union
- Regina District Labour Council

If your Union or Association have questions please send your name and contact information to any of the following contacts:

- The Regina Civic Members' Union – CUPE Local 21 at: (306) 352-8282 or cupe.local21@sasktel.net
- Larry Kowalchuk at: (306) 529-3001 or larry@kowalchuklaw.ca
- Jake Zuk at: (306) 790-3180 or jzuk@grj.ca

In Solidarity,

Laird Williamson
President

cc: L21 file

encl.

/wz