

Court orders former OPSEU director to testify in wrongful dismissal case despite NDA

By **Frank Portman**

Law360 Canada (May 26, 2026, 10:16 AM EDT) -- The Superior Court of Justice, in *Kachra v. OPSEU Pension Trust*, 2026 ONSC 2092, delivers a pair of rulings for plaintiff-side executive employment lawyers in harassment matters: it makes it fair game during discovery to probe similar complaints from other employees, even if they do not involve their client, and it limits the use of NDAs as a shield to disclosure.

In a decision that broadens the scope of questioning in harassment cases, Associate Justice Karen Jolley allowed the plaintiff to examine a former senior human resources executive about complaints allegedly made against a manager accused of harassment and reprisal.

The decision is significant in that previous case law suggested that an alleged harasser's prior conduct was often irrelevant; just because they harassed one employee doesn't necessarily mean they're likely to harass another (and vice versa).

The *Kachra* case is clear: unrelated bad acts by a harasser may need to be disclosed.

Witness willing, employer unwilling

The findings arose in a pretrial motion before Jolley in a wrongful dismissal case in which plaintiff Aly Kachra sought leave under Rule 31.10 to examine a non-party, Reg Swamy, the former chief pension officer (CPO) and head of human resources at OPSEU Pension Trust.



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Kachra argued Swamy had information relevant to the case and was willing to be examined, but an NDA that the defendant, OPSEU Pension Trust, refused to waive prevented him from doing so.

Justice Jolley found the examination would assist in the fair and efficient resolution of the matter.

Kachra, who served as director of investment risk from 2017 until his termination in early 2020, claimed he was subjected to an increasingly toxic work environment under his manager, Mr. Hudacin.

The claims included "bullying, harassment, mistreatment of others, yelling and rudeness." Hudacin's conduct allegedly undermined both team functioning and Kachra's ability to carry out his risk-management responsibilities.

According to the decision, Kachra claimed to have repeatedly raised concerns about this conduct internally, including after he alleged his bonus was cut in retaliation for complaining.

Justice Jolley wrote that Kachra suggested that he later raised the issue with Swamy, alleging he was promised the concerns would be addressed but saw no indication that meaningful action was taken.

Kachra said he was instead encouraged to seek employment elsewhere.

Statement of claim alleged 'history of bullying, harassment'

The court noted that according to the amended statement of claim, Kachra found the response particularly jarring given, as the statement of claim alleged, "[Kachra's] understanding that Mr. Hudacin had a history of bullying and harassing behaviour, as evidenced by numerous prior complaints against him."

Part of Kachra's claim for moral damages rests on allegations that the organization ignored earlier complaints involving Hudacin.

According to the amended statement of claim, "a number of other employees had brought forward similar complaints to Human Resources about Mr. Hudacin's behaviour, and despite its members' knowledge, nothing was done about it" and "Human Resources knew or ought to have known that Mr. Hudacin had been the subject of several other complaints of harassment ... and Human Resources deliberately chose not to do anything about it, forcing the plaintiff to continue to work in a toxic work environment."

Seven employees were identified by Kachra during examination for discovery as those he believed complained about Hudacin's conduct, including Swamy, whom he alleged had at one point launched an investigation into the manager's behaviour.

Although Kachra said he did not know the full particulars of those complaints, his affidavit described allegations by others involving "bullying, harassment, mistreatment of others, yelling and rudeness, ... taking staff to strip clubs, offering them narcotics and asking Asian staff to take an Accent reduction course."

Kachra further believed the concerns had been raised "through various channels including diversity counsel, HR, external investigators and to OP Trust executives," said the ruling. He also claimed his conversations with Swamy during his employment left him with the understanding that other similar complaints had been made.

NDAs losing ground to harassment, bullying evidence

That alleged broader history became central to the motion.

The court said it was "clear" Swamy had relevant evidence concerning both prior complaints about Hudacin and the company's response to them. Meanwhile, the defence argued that alleged complaints involving other employees were neither relevant nor material and called the proposed questioning "invasive."

Jolley also noted the defendant had previously produced only one heavily redacted complaint after being ordered to disclose complaints concerning Hudacin's workplace behaviour.

The ruling makes clear that the issue was not simply whether other complaints existed, but whether the employer knew about them and what, if anything, it did in response. The court tied that issue

directly to Kachra's claims for moral and punitive damages. Every executive employment lawyer should take note.

Kachra is seeking damages for wrongful dismissal, along with \$250,000 in moral damages tied to the alleged bad-faith manner of his dismissal and \$500,000 in punitive damages.

Court cited fairness, efficiency

Part of the plaintiff's moral damages claim, the court noted, was founded on allegations that human resources knew, or ought to have known, about prior complaints concerning the manager's conduct and failed to act.

Justice Jolley granted leave to examine Swamy, noting that because the defendant wouldn't waive the NDA, Kachra was unable to obtain the information from him even though he was "otherwise willing to provide it."

While the ruling does not invalidate NDAs generally, it signals that confidentiality agreements will not necessarily prevent access to relevant evidence in litigation, particularly where the witness is prepared to cooperate, and the evidence goes to central issues in dispute.

For executive employment lawyers, the ruling may mark a significant development in how courts approach evidence of prior workplace complaints, particularly when there are allegations of harassment and bullying.

Defendants resisting production on the basis that earlier allegations involve different employees may now face a more difficult argument where those complaints are tied to allegations of institutional knowledge, failure to investigate or punitive misconduct.

Frank Portman is an employment lawyer at Massey LLP. His specialty is executive employment law where he assists presidents, vice-presidents and other C-level executives and the organization seeking to hire their talents to complete the deal through effective executive employment contracts.

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