DENTONS

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Grow | Protect | **Operate** | Finance

In this issue

The right to a harassment-free workplace... 20 years later![1]

2024 marks the 20th anniversary of the enactment of legislative provisions protecting Québec employees' right to a workplace free from psychological harassment. Since June 1, 2024, the *Act respecting labour standards* (**ALS**)[2] has specifically imposed a legal obligation on employers in Québec to prevent any situation of harassment and, where applicable, to take action to stop it. In celebration of this milestone, this edition of our newsletter highlights seven key decisions on this issue, handed down over the years by the Commission des relations du travail (**CRT**), the Administrative Labour Tribunal (**ALT**) and grievance arbitrators[3].

[1] Thanks to law students Stéphanie Macdonald and Lauren McAuley for their invaluable help in preparing this dossier.
[2] RLRQ c N-1.1.
[3] The CRT was replaced by the ALT on January 1, 2016.

To recap, section 81.18 of the LSA defines psychological harassment as follows:

> Psychological harassment means any vexatious conduct, whether in the form of behaviour, communication, acts or gestures that are either hostile or unwelcome, and which affects an employee's dignity or psychological or physical integrity, and that results in a harmful work environment for the employee. More specifically, psychological harassment includes such behaviour whether in the form of verbal comments, actions, or gestures of a sexual nature.
>
> Even a single serious incident of such behaviour can constitute psychological harassment if it has a lasting, harmful effect on an employee.

Bangia v. Nadler Danino S.E.N.C., 2006 QCCRT 419

This is one of the first decisions in which the CRT has addressed a complaint of psychological harassment, thus establishing the applicable analysis criteria.

After being dismissed from his position as a legal assistant at a law firm, the complainant filed a psychological harassment complaint under section 123.6 of the ALS. He alleged 38 instances of harassment by his superior, a partner at the firm, claiming that he was unfairly accused of incompetence, based on isolated incidents and subjected to insults and denigration.

During the hearing, the complainant's superior denied most of the allegations but admitted to occasionally using coarse language and aggressive expressions during their interactions. He asserted, however, that his comments were not directed at the complainant personally. He justifies his use of foul language by pointing out his frustration with the complainant's significant work errors, and by the complainant insisting on carrying out his duties in a manner contrary to the instructions given.

In its ruling, the CRT clarified that in cases of psychological harassment, the burden of proof rests with the complainant. The complainant must demonstrate the presence of five criteria outlined in section 81.18 of the ALS: 1) vexatious conduct, 2) repeated conduct (although this criterion is waived in the case of serious misconduct), 3) hostile or unwanted conduct, 4) conduct affecting the employee's dignity or psychological or physical integrity and 5) conduct resulting in a harmful work environment. In this case, the CRT determined that the complainant had failed to meet these criteria.

By dismissing the complaint, the CRT reaffirmed employers' managerial authority, emphasizing that the introduction of harassment provisions in the ALS does not negate their power to enforce workplace rules, procedures and performance standards. It further noted that isolated outbursts or severe reactions can sometimes occur in high-pressure and stressful work environments, and that in order to determine whether or not psychological harassment is involved, each situation must be analyzed in context, from the perspective of a reasonable person.

Rabbath and Société des Casinos du Québec inc., 2012 QCCRT 55

This decision underscores that an employee does not need to have actually experienced harassment to benefit from the presumption that they were dismissed for exercising a legal right. Simply expressing, in good faith, the intention to file a complaint is sufficient. In cases involving harassment allegations, employers must thoroughly document the dismissal process to demonstrate that the reason for termination is legitimate and not a pretext.

After her dismissal, the complainant filed several complaints with the CRT, including one for psychological harassment and another for prohibited practices, claiming she was terminated after expressing her intent to file a harassment complaint.

The complainant, a middle manager, accused her employer of lacking transparency and fairness during a departmental reorganization that excluded her from consultation. She was further upset when a colleague was promoted to a position that had never been advertised. Relations with her superiors deteriorated, and eventually, the employer placed her on a leave of absence, ostensibly to "reflect on the situation," which she found distressing. Upon her return a week later, the employer continued to criticize her for inadequate initiative, poor supervision of subordinates and isolation. Interpreting this as harassment, she threatened to file a complaint with the Commission des normes du travail (**CNT**). About six weeks later, despite noting an improvement in her attitude, the employer dismissed her for poor performance.

In her harassment complaint, the complainant claimed that the employer acted abusively by suspending her and repeatedly questioning her competence. The CRT dismissed this complaint, concluding that the employer's actions were within its managerial authority and that the complainant's claims lacked credibility.

However, the CRT upheld the complaint regarding dismissal for prohibited practices. It determined that, by informing her employer of her intention to file a harassment complaint with the CNT, the complainant exercised a protected right, triggering the presumption that her dismissal was related to this action. The employer failed to disprove this presumption, as the evidence did not show that her intent to file a complaint was unrelated to her termination. The CRT also criticized the employer for dismissing the complainant shortly after noting improvements in her performance and after learning that she had consulted a lawyer about her rights regarding harassment.

Verreault v. ArcelorMittal Mines Canada inc., 2014 QCCRT 9

This decision provides valuable insight into the extent of an employer's obligations when addressing psychological harassment.

Shortly after being hired, the complainant reported to management that his supervisor was using rude and contemptuous language, imposing an autocratic management style and making numerous unjustified accusations. Following a flawed investigation, the employer concluded that the complainant had a distorted view of his supervisor and was unable to handle the pressure and stress. The employer then suggested the complainant resign, which he refused. As a result, the employer began to isolate him and demanded he undergo a psychiatric evaluation, despite having completed one just a few months earlier during the hiring process.

The CRT found that the supervisor's behaviour toward the complainant from the time he joined the company amounted to psychological harassment. Upon being informed of the situation, the employer failed in its duty to take reasonable steps to stop the harassment. The investigation was mishandled by a person who lacked training in handling harassment cases and demonstrated bias by interviewing the accused before the complainant, and by failing to interview other relevant parties. This led to the unjust rejection of the internal complaint. Furthermore, the employer's subsequent actions worsened the complainant's suffering.

The decision also emphasizes the employer's failure to meet its obligation to prevent harassment. Specifically, the employer had not provided harassment-related training to its managers for several years, claiming they were too busy. The ruling clarifies that merely making a harassment policy available to employees is insufficient to fulfill an

employer's duty of prevention. Employers must ensure that all employees fully understand what constitutes psychological harassment, the specific measures taken to prevent and address it, and the consequences of failing to comply with these rules.

Moore and A&G Electrostatique inc., 2018 QCTAT 6031

This decision serves as a reminder that an employer cannot remain passive when faced with a situation of psychological harassment.

In this case, the Administrative Labour Tribunal (**ALT**) heard a complaint from an administrative assistant who claimed to have been harassed by a colleague through a single act of serious misconduct. Specifically, the evidence showed that the colleague had made death threats against her after learning that she had discussed the criminal charges filed against him.

Following the incident, the complainant expressed her fears to her employer and requested that she no longer have contact with the colleague. In response, the employer temporarily assigned the colleague to a different location. However, the very next day, the colleague appeared at the same site where the complainant worked. When she was made aware of his presence, she became alarmed and immediately informed her employer. His response was dismissive, stating that he needed the colleague to fill in for an employee on vacation and that he "wouldn't disrupt business" because of her fears.

The employer argued that the psychological harassment claim should not be upheld, as the misconduct was committed by another employee, not by the employer. The ALT rejected this argument, emphasizing that the obligation to prevent and stop harassment lies with the employer, regardless of who commits the vexatious act. In this case, the employer failed to take reasonable measures to ensure that the harassment would not continue and to guarantee the complainant's safety at work.

Lazzer v. Magasin Baseball Town Inc., 2022 QCTAT 478

This decision highlights that psychological harassment can arise from excessive surveillance, particularly when it creates an unhealthy work environment for the employees involved.

The two complainants filed psychological harassment complaints against their employer, claiming that they were harassed through excessive monitoring via the store's surveillance camera system.

The Administrative Labour Tribunal (**ALT**) emphasized that constant and diligent video surveillance of an employee constitutes an unreasonable working condition, infringing upon their rights and freedoms, in violation of section 46 of the *Charter of Human Rights and Freedoms*[4]. However, such surveillance may be justified if there is a valid, serious reason for it, a direct link between the surveillance and that reason, and if it is conducted in a way that minimizes the infringement on the employees' rights.

In this case, the employer argued that the cameras were installed to prevent shoplifting. However, the evidence revealed that the cameras were placed without informing the employees, and the employer frequently used the system to monitor staff performance remotely. On occasion, he would call the employees—sometimes once every two or three weeks—shouting in a panic if no one appeared on the cameras or if someone was absent for too long. The cameras were also used to check for unauthorized use of cell phones during work hours.

While acknowledging the employer's right to supervise staff reasonably, the ALT concluded that the surveillance in this case was unjustified and excessive. This monitoring caused anxiety among the employees, compromised their dignity and integrity, and therefore constituted psychological harassment.

[4] RLRQ c C-12.

Syndicat général des professeurs et professeures de l'Université de Montréal (SGPUM) v. Université de Montréal, 2022 CanLII 68102 (QC SAT)

This decision underscores that in cases of whistleblowing, victims must avoid damaging the reputation of the respondent; otherwise, they risk being penalized.

A university professor was dismissed for making defamatory statements and death threats against a colleague with whom she had previously engaged in an extramarital affair.

Amidst the "Me Too" whistleblowing movement, the complainant filed both criminal and workplace complaints against a colleague, alleging that during their two-decade intimate relationship, she had been a victim of sexual assault and misconduct on multiple occasions. She claimed that, at the beginning of their relationship and his career, the colleague held a position of authority over her.

The complainant then escalated matters by sending an email to all of her colleagues, attaching copies of the sexual assault complaints she had filed. She also accused the colleague of financial fraud amounting to several thousand dollars during his duties. In response, the colleague filed a psychological harassment complaint against the complainant with the university. The institution outsourced the investigation of both complaints to a specialized firm. However, towards the end of the investigation, the complainant sent a letter to her colleague, which contained comments amounting to death threats.

The investigation concluded that the complainant's sexual harassment claims were unfounded, but her colleague's harassment complaint was substantiated—particularly due to the letter with death threats, which constituted severe misconduct. The employer dismissed the complainant for serious misconduct, specifically the defamatory remarks and threats made against her colleague. The arbitrator upheld the dismissal, concluding that the complainant had engaged in misconduct both before and during the investigation of her complaint.

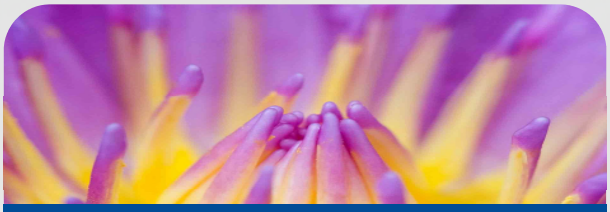
Connolly v. Unifirst Canada ltée, 2023 QCTAT 4096

This decision clarifies the distinction between the concepts of work conflict and psychological harassment. In cases of harassment, there is typically a "dominant-dominated" relationship, with one party suffering, often passively. In contrast, a work conflict involves both parties actively engaging in confrontation.

The complainant filed a psychological harassment complaint against his employer, alleging that for several years, certain company representatives treated him with contempt and conspired to force him out of his job. He also cited a serious incident in which a company executive became angry and insulted him. The complainant claimed that the harassment he endured left him with no choice but to resign.

In its ruling, the Administrative Labour Tribunal (**ALT**) determined that neither the individual events nor the overall situation described by the complainant amounted to psychological harassment. The decision-maker found that it was generally the complainant who acted vexatiously toward his superiors and colleagues, and who displayed significant difficulties in managing conflict. The ALT concluded that the complainant was involved in a work conflict, for which he bore substantial responsibility, rather than being a victim of psychological harassment.

Regarding the executive's outburst during the final meeting, the ALT ruled that, despite the harsh nature of the comments, the response was a spontaneous reaction to the complainant's disrespectful, insubordinate and confrontational behaviour. Case law distinguishes between a momentary display of aggressiveness or irritability and sustained psychological harassment.



The legislative provisions related to harassment have undergone several amendments over the past two decades. Notably, since January 1, 2019, employees now have two years (instead of 90 days) from the last occurrence of harassment to file a complaint under article 123.6 of the Act respecting labour standards (ALS). Additionally, employers are now specifically required to implement and make available to employees a policy for preventing and handling harassment complaints. Furthermore, as of September 27, 2024, this policy, now referred to as the *Policy for the Prevention and Handling of Psychological Harassment and Sexual Violence*, must integrate the provisions of the *Act to Prevent and Combat Psychological Harassment and Sexual Violence in the Workplace*.

Decision briefs

Leblanc v. Lightspeed POS Inc., 2024 QCCS 1828 (statement of appeal)

Lightspeed POS Inc. (Lightspeed) terminated Mr. Leblanc's employment, offering him a generous severance package. However, in line with its applicable incentive plans, Lightspeed cancelled all stock options and restricted stock units (RSUs) previously granted to him, including those that would have vested or become exercisable during the notice period. No compensation was paid to Mr. Leblanc in relation to these benefits. As a result, he sought legal action before the Superior Court, claiming compensation for the losses incurred due to the cancellation of these incentives.

The Court dismissed Mr. Leblanc's claim in its entirety. After a thorough review of relevant case law, the Court determined that, in general, contractual clauses stipulating the cancellation of options or RSUs upon termination of employment are enforceable. Although these incentive plans are often contracts of adhesion, they are not considered abusive, as they represent discretionary benefits in addition to the employee's fixed salary. The Court further noted that, since stock options and RSUs are granted at the employer's discretion and primarily for employee retention, clauses cancelling these benefits upon termination do not amount to a waiver of the right to indemnity in lieu of reasonable notice, as per article 2092 of the *Civil Code of Québec* (**CCQ**). Therefore, these benefits are not factored into the calculation of severance indemnity.

Perron v. Gilles Veilleux ltée, 2024 QCCA 824

This case concerns an appeal from a decision that dismissed an application for judicial review of a Administrative Labour Tribunal (**ALT**) ruling. The ALT had previously dismissed a worker's employment injury claim on the grounds that it was filed too late.

Section 272 of the *Act respecting Industrial Accidents and Occupational Diseases* (**AIAOD**) requires a worker to file a claim with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (**CNESST**) within six months of becoming aware that they are suffering from an occupational disease.

In this case, the ALT set the "date of knowledge" as October 24, 2017, when the appellant first experienced shoulder pain and speculated that it might be related to his strenuous work. Consequently, the ALT determined that the claim filed on July 26, 2018, was untimely.

Yet, according to the Court of Appeal, it is impossible to grasp how, based on the evidence, the ALT was able to conclude that it "had been brought to the knowledge" of the appellant that he was suffering from an occupational disease before April 4, 2018, the date on which his doctor first informed him of this. Firstly, case law is clear that the mere assumption made by a worker that his pain can be explained by his hard work, does not, in itself, lead to the conclusion that he has knowledge that he is suffering from an occupational disease. Secondly, while it is true that a trend in ALT jurisprudence maintains that a worker can become aware of his illness and the relationship between it and his work other than through the intervention of a doctor, this knowledge must be demonstrated by the evidence, which was not the case here.

The Court of Appeal criticizes the ALT for omitting decisive evidence. In particular, it could not understand why the decision was silent on the fact that the doctor's declaration to the CNESST was made for the first time on April 4, 2018, specifying that while it is true that the transmission of the medical attestation is not a *sine qua non* condition for acquiring the knowledge required by article 272 of the AIAOD, it is nonetheless a relevant element that the ALT had to take into account. The Court also criticized the ALT for failing to take into consideration the fact that the plaintiff had already experienced similar pain in 2011, but that this had disappeared after he had received a simple infiltration. This element is decisive in explaining why the worker may have initially sincerely believed that his pain was only temporary. Failure to take these elements into account renders the decision unreasonable.

The Court of Appeal determined that the only reasonable decision was to establish April 4, 2018, as the starting point for the time limit under article 272 of the AIAOD. Consequently, the appellant's claim was deemed timely.

Veilleux v. ICAR inc., 2024 QCCA 1057

ICAR hired Mr. Veilleux as "academy director" of a private racing club. At the latter's request, Mr. Veilleux and ICAR signed a "preliminary memorandum of understanding" providing for a three-year "mandate" and specifying, among other things, the "salary" that the company would pay Mr. Veilleux. The document also specifies that he will also be entitled to the payment of a performance bonus, the payment of which will depend on the achievement of objectives to be "mutually set," as well as the payment of fringe benefits. This document was originally intended to be replaced by a more comprehensive one, but in fact it is the only written agreement executed by the parties. However, after signing, Mr. Veilleux asked ICAR if it could pay him his salary in the form of fees, which he would bill through his management company (Gemini), to which ICAR agreed. In fact, Mr. Veilleux receives no salary, performance bonus or benefits, but Gemini receives fees equivalent to the "salary that would otherwise have been payable to him."

A few months later, ICAR dismissed Mr. Veilleux on the grounds that the company was experiencing economic difficulties and needed to reorganize. Claiming that he was bound to ICAR by a three-year fixed-term employment contract, Mr. Veilleux brought an action to claim a sum equivalent to the salary he would have earned until the expiry of this term. ICAR contests this claim, arguing that the contract governing Mr. Veilleux's employment is a service contract between it and Gemini, which it could therefore terminate unilaterally in accordance with article 2125 of the CCQ.

The Superior Court agreed, dismissing the action in its entirety. It concluded that the contract between the Veilleux parties was one of service, that ICAR had not committed any abuse of right, and that there was no justification for ordering it to pay moral damages and professional fees. She noted that when the parties verbally modified the protocol so that ICAR would pay Gemini fees rather than Mr. Veilleux a salary, they changed the nature of the employment contract to a service contract. The behaviour of the parties also corresponds to that of parties to a service contract.

The Court of Appeal found no reviewable error in the judgment. The judge was right to characterize the contract, as it existed at the time it was terminated, as a contract of service. Firstly, barring exceptional circumstances, a legal entity cannot be qualified as an employee. This follows from the well-established principle that a person who has opted for the advantages of incorporation should not be allowed to avoid its disadvantages. Furthermore, the conclusion of a contract with a corporate entity was not imposed on Mr. Veilleux, but rather was done at his request. In this dispute, there were no exceptional circumstances that allowed the Court to disregard Gemini's distinct personality.

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