

# Does Sharing Confidential Information About An Employee Without Their Knowledge Justify Dismissal?



In this Québec [case](#), the complainant, who held the position of production team lead, filed a complaint under section 124 of the *Act respecting labour standards*, claiming to have been dismissed without good and sufficient cause. He was responsible for supervising a team of six to nine employees.

At the end of July 2022, an employee under his supervision filed an internal complaint alleging harassment, discrimination and a toxic work climate created by the complainant. The employer immediately conducted a thorough investigation, which found that the complainant had committed a serious fault by repeatedly acting in a manner incompatible with his duties and the company's values. Following the investigation, the complainant was immediately dismissed.

The investigation revealed that the complainant had asked inappropriate questions of an employee under his supervision after that employee mentioned to the complainant that he was having difficulties in obtaining the required documents to register at a mechanical trade school due to a recent name change related to his gender transition. Neither the employer nor the complainant was aware of this.

The complainant then asked inappropriate questions about the employee's genitals and disclosed to another employee under his supervision that their colleague had undergone a gender transition.

In addition, the complainant insulted the employee by giving him a derogatory nickname that implied he was not competent, reliable and efficient in performing his duties.

## **Decision**

The court found that all of the complainant's acts and comments towards his employee were very serious, particularly given his role as team lead. Any person responsible for overseeing employees is expected to behave in an exemplary manner, to uphold the company's policies, particularly those concerning harassment and respect in the workplace, and to set an example for all employees. In the Tribunal's view, the questions the complainant asked his employee undoubtedly constituted vexatious behaviour that violated the right to privacy and the dignity of the employee under

his supervision.

Moreover, the Tribunal reiterated the importance of the right to privacy set out in the *Québec Charter of Human Rights and Freedoms*, the *Civil Code of Québec* and the *Act respecting the protection of personal information in the private sector* ("*Private Sector Act*"). In fact, when the complainant shared the information that his employee had undergone a gender transition, this communication constituted a violation of the right to privacy as provided in the above laws, since the employee had not given his prior consent to such disclosure. According to the Tribunal, this communication was also contrary to the principles set out in the *Private Sector Act*, since the person who received the confidential information did not need it to perform their duties. The complainant should have exercised discretion and respected the confidentiality obligations incumbent on him as team lead.

Lastly, the court took into consideration the absence of remorse, the repeated nature of the complainant's actions and the nature of his position to confirm that the complainant's actions constituted a serious fault and that the employer was justified in dismissing him.

## **Takeaways**

This decision reaffirms the importance of employee privacy and dignity and highlights the various laws in which these fundamental rights are enshrined. In addition, this decision emphasizes the importance of a healthy and respectful workplace, free from all forms of discrimination, harassment and vexatious behaviour.

Lastly, this decision highlights the fact that every company must put in place appropriate measures to respect the privacy of employees and any confidential information they may disclose.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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