

# Employment And Labour Newsletter – Montréal



The right to a harassment free workplace... 20 years later!<sup>1</sup>

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)*<sup>2</sup> 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<sup>3</sup>.

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*<sup>4</sup>. 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.

### ***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 decisionmaker 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.

To view the full article, [click here](#).

#### **Footnotes**

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.

4. RLRQ c C-12.

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