In Search Of Clarity In Matters Of Psychological Workplace Injuries

Far from clearing, the fog only thickens when it comes to the recognition of a psychological work accident in Québec. Rather than converging in a clear direction, the case law of Québec's Administrative Labour Tribunal (*Tribunal administratif du travail*) is divergent, making it difficult for employers when arguing the eligibility of an employment injury for benefits from Québec's health and safety board, the CNESST.

Four conflicting directions have emerged in recent case law.

Divergent trends

First, several decision-makers[1] have expressed the opinion that, in matters of psychological workplace injuries, it is not necessary to look for an event that is particularly "violent" or "traumatic".A worker who is exposed to an event that is merely "objectively impactful", or to events that are "unique and particular" and that do not arise from purely personal or subjective considerations, may succeed in proving that they were the victim of a work accident. However, we note that the interpretation of these new terms is not consistent. For some, this does not necessarily call into question the principles established in earlier case law, while for others, these terms suggest that classifying events on a scale of intensity is clearly inappropriate.

Other decision-makers[2] have instead chosen to uphold previous case law and reaffirm that for a similar set of facts an event must be identified as "objectively traumatic" in order for a worker to prove that they were the victim of a work accident.It is particularly noteworthy to read that the legislator intended that decision-making consistency be a fundamental principle of administrative tribunals. Abruptly changing a legal framework that has prevailed for decades, absent any legislative change or guidance from a higher court, deprives litigants of a form of predictability in the conduct of their affairs.

Going further than the two trends described above, a third approach[3]proposes that any event occurring at work may give rise to an employment injury as long as it was unexpected.Although widely commented upon, this proposed paradigm shift appears to have gained little traction.[4] In *Patenaude*, relatively innocuous facts (such as being denied the opportunity to speak at a group meeting due to lack of time on the agenda, or having a disagreement with a colleague who wished to remain in the room during a

class being taught by the worker) were defined as an unforeseen and sudden event simply because they were unexpected.

Finally, following a development in 2025, a few administrative judges aligned themselves with an innovative opinion according to which a psychological injury could constitute an "injury", thereby allowing the application of the presumption in section 28 of the *Act respecting industrial accidents and occupational diseases*. This presumption facilitates establishing a work accident, when it is proven that an injury occurred at the workplace while the worker was performing their duties.Breaking with more than 30 years of consistent case law, these decision-makers[5] believe that a psychological pathology that arises without any latency period necessarily constitutes an "injury" rather than an illness. They argue that advances in scientific knowledge and the evolution of legislative terminology support this theory.

Tips for employers

In short, this shifting landscape presents many challenges for employers who do not know what burden of proof they will face at a hearing.The recognition of psychological injuries will always be a challenge for consistent interpretation, given the varied nature of accidents, which necessarily involves a fair amount of subjectivity. Before the dust and the case law settle, it appears prudent for the litigators to provide evidence capable of addressing the requirements specific to these different lines of reasoning. In this evolving context, thoroughly documenting the circumstances surrounding the events alleged to have caused the injury takes on heightened importance.

Ontario case law on the subject, for its part, with respect to the definition of an *objectively traumatic event*, establishes that a worker's eligibility for a traumatic mental stress (TMS) benefit requires evidence of exposure to triggering events that are objectively traumatic.The courts have generally held that this assessment must be made from the perspective of the average worker within the general workforce, rather than based on the particular sensitivity of a worker in the same type of employment.[6] It remains an interesting question as to whether Ontario courts might eventually look to Québec's different trends for guidance.

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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