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THE POTENTIAL CONSEQUENCES OF A BULLY IN THE WORKPLACE

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A recent court case in England involving a high profile company, Cantor-Fitzgerald, generated a great deal of media coverage and attention, even on this side of the Atlantic Ocean. It also brought to the forefront a growing area of concern in the employment field – bullying in the workplace.

Background

A senior employee alleged that he had been constructively dismissed by Cantor-Fitzgerald. The basis of his claim was the bullying and harsh treatment he had been subjected to by the president of the company. More specifically, the employee claimed that over a six-month period the president had screamed obscenities at him, acted in a demeaning and intimidating manner, and repeatedly threatened to fire him. As a result of this abusive conduct, the employee asserted the contract of employment had been breached and he was justified in quitting his employment.

Findings of the Court

The High Court of London agreed with the employee. It held that the mistreatment of the employee was of such a degree that it was reasonable and justified for him to quit his employment on the basis of a constructive dismissal.

In its defence, Cantor-Fitzgerald claimed that the behaviour and language of its president was accepted practice in the industry. Cantor-Fitzgerald also claimed that employees in this business earn very large salaries and this compensation is based, in part, on the high-stress, high-demand environment that is a requirement of the job. The Court rejected both of these notions.

The Court determined that while due regard must be made to the character and nature of the business in question, certain standards of fair treatment cannot be avoided regardless of the type of business or level of compensation earned by an employee.

Applicability to Canadian Workplaces

Although this is an English decision, it is still relevant to Canadian employers as the legal principles applied by the English Court are also applicable in Canada

The Court made clear that the days of employment contracts giving rise to a “master and servant” relationship are now passed. This idea has been replaced by an acknowledgement that there is an obligation of mutual trust and confidence and a general duty of co-operation between the parties. An employee’s participation in the business is no longer regarded simply as the work of a servant for the benefit of the employer. Rather, it is to be recognized as one of the most important things in an employee’s life, giving not only a livelihood, but an identity and sense of self-esteem.

On that basis, employers should be cognizant of the fact that bullying in the workplace, and the mistreatment of employees, can violate the modern relationship between employers and their employees. In addition to making for an unhealthy workplace, it leads to increased sickness and disability claims, reduced productivity, higher rates of staff turnover and, ultimately, claims for constructive dismissal.

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Shane Smith is a member of our Labour and Employment Group. He provides legal services and advice to a wide range of clients in the private and public sectors.

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