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LABOUR AND EMPLOYMENT NEWSLETTER

PSYCHOLOGICAL HARASSMENT LEGISLATION IN QUEBEC

François Garneau
Montreal
Tel. 514.871.5414
fgarneau@millerthomsonpouliot.com

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In 2002, the Quebec government amended the Labour Standards Act to incorporate provisions dealing with psychological harassment in the workplace. However, these provisions only came into force on June 1, 2004.

The purpose of the amendments was to introduce a statutory definition of psychological harassment, establish the right of an employee to work in a harassment free environment and impose on employers the obligation to adopt measures ensuring a harassment free workplace. It also provided a statutory mechanism for the investigation of harassment complaints and enacted remedies available to employees who have been victims of psychological harassment. This legislation is unique to Quebec and it was with some apprehension that employers anticipated the coming into force of the amendments in June of 2004.

The Labour Relations Commission was given the mandate to investigate complaints filed by employees alleging they had suffered psychological harassment at the hands of an employer or co-worker.

A little over a year later, the Labour Standards Commission reported that a total of 2,500 complaints had been filed by employees all across Quebec. Of these complaints, 48% of the files were considered closed by the Commission. Of this number, close to a third had been resolved following a settlement arrived at between the employer and the complainant. However, the Commission did not indicate what percentage of complaints had been either abandoned by the complainant or dismissed by the Commission following its investigation. As of June 1, 2005, 52% of the remaining 2,500 complaints were still being processed by the Commission and close to 300 were now the object of a formal investigation. By this time, 36 unresolved complaints had been referred to the Labour Relations Board for a hearing on the merits. Although the Commission has issued no further statistics on the matter, one can assume that several hundred additional complaints have been filed since June 2005.

The statistics also revealed that 93% of complaints dealt with allegations of conduct of a repetitive nature as opposed to single isolated incidents. 62% of the complainants were women even though they only form 49% of the workforce in Quebec. Finally, in four out of five cases, the alleged conduct originated from a representative of the employer rather than from a co-worker.

Surprisingly, though a significant number of complaints had already been referred to the Labour Relations Board, there was, by February 2006, only one reported judgment from the Board dealing with the interpretation and application of the psychological harassment provisions. Unfortunately, the case is of little value as a precedent because judgment was rendered by default as the employer declined to appear before the Board. Nevertheless, the Board relying on the unchallenged testimony of the complainant concluded that she had been the victim of psychological harassment because her immediate superior had ostracized her in the workplace (a local fast food outlet) because of her sexual orientation. No specific damages were awarded as the Board reserved its jurisdiction on the proper remedy.

What the Commission's statistics do not reveal, and this may partially explain the limited number of judgments rendered by the Board, is that the Commission's investigative process is, at times, inordinately slow and ineffective.

In the months following the coming into force of the legislation, many employers were only advised by the Commission that complaints had been directed at them many months after their initial filing. In addition, the Commission steadfastly refuses to provide employers or their counsel with copies of written statements or declarations made by complaining employees with the result that most employers are left in the dark as to the precise nature of the allegations made against them. Request to obtain these statements through access to information legislation have been consistently denied by the Commission.

Rather than immediately initiating and concluding its investigation in a timely manner as required by the Act, the Commission will usually defer the investigation and suggest mediation to the employer at a stage where the employer still does not know the precise nature of the allegations. In some other cases, employers have been notified rapidly of the existence of a complaint but it has taken sometimes up to six months before a representative of the Commission is appointed to formally commence an investigation. Many investigators have no formal legal background and little previous investigative experience. It is also questionable whether the Commission has the required staff to investigate complaints in a timely fashion.

All of this has led to a situation where investigations are still not completed more than a year after the filing of the complaint. Moreover, even when the Commission determines, after investigation, that a complaint is not justified, a disgruntled employee may nevertheless request that his file be subject to an administrative review. If, at this point the Commission denies the review, the employee still has the right to refer his complaint to the Labour Relations Board and request a hearing. There is normally a six to eight month delay before a complaint can be heard once it has been filed before the Board. This has resulted in many situations where complaints filed in 2004 are still awaiting the conclusion of the investigative process and ultimately may not be heard before 2007.

This protracted process has serious implications for employers because of the nature of the remedial powers the Board may exercise if it ultimately finds that a complainant was, in fact, the object of psychological harassment. The Board may reinstate an employee, issue an order for the payment of all lost wages, demand rectification of the employee's file and order the employer to reimburse the costs of medical and psychological care. It may also award moral and punitive damages. An award made by the Board is a final judgment from which there is no appeal.

It is hoped that the Board will soon issue further judgments defining the exact scope of the concept of psychological harassment which should help all interested parties in better assessing their rights and responsibilities under the legislation. In the meantime, we can only recommend that employers act in a proactive fashion and possibly initiate their own internal investigation and try to resolve such matters rapidly.

A B O U T T H E A U T H O R :

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

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Guelph: 519.822.4680

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