



Psychological harassment, boon or bane: how to interact with the CNESST?

By André Sasseville and Kassandra Church





Table of contents

I.	Introduction	3
A.	More than 10 years after the coming into force of the provisions of the Labour Standards Act on psychological harassment, where do we stand?	3
B.	Some statistics	3
II.	Definition of psychological harassment.....	4
A.	Section 81.18 of the LSA: the five factors that must be established	4
1.	Vexatious behaviour	4
2.	Repeated behaviour	5
3.	Hostile or unwanted conduct.....	5
4.	Conduct that affects an employee's dignity or psychological or physical integrity.....	5
5.	Conduct that results in a harmful work environment.....	5
B.	Employees protected by these provisions of the LSA	5
C.	Tribunals having jurisdiction over claims for psychological harassment.....	5
III.	Duties of the employer	6
A.	Preventive measures.....	6
1.	Adopting and applying an internal policy	6
2.	Other possible measures	7
B.	How the employer can intervene	7
1.	Filing a complaint.....	7
2.	Conducting an investigation	7
3.	Measures to be taken pursuant to the conclusions of the investigation	7
IV.	Judicialization.....	8
A.	The new procedure followed by the CNESST.....	8
B.	Circumscribing the evidence at hearings	8
1.	Requests for particulars	8
2.	Requests for summary dismissal of the complaint or grievance	9
V.	Remedial powers of adjudicators of psychological harassment complaints	9
A.	The statutory remedial framework	9
B.	Monetary indemnities generally awarded.....	9
C.	Other remedial measures ordered	9



Psychological harassment, boon or bane: how to interact with the CNESST?

I. Introduction

A. More than 10 years after the coming into force of the provisions of the Labour Standards Act on psychological harassment, where do we stand?

Since the adoption on June 1, 2004 of the provisions of the *Labour Standards Act*¹ (the “**LSA**”) aimed at ensuring the right of employees to a workplace free from psychological harassment, what has transpired? What is the proportion of complaints or grievances that have been upheld? What indemnities have been awarded by adjudicators as damages when they have found that there was psychological harassment occurring in the workplace? Has the definition of the criteria for psychological harassment evolved more restrictively? From the foregoing standpoint we will review the developments in the case law since the arbitral award rendered by arbitrator François Hamelin in the matter of *Centre hospitalier régional de Trois-Rivières (Pavillon Saint-Joseph) v. Syndicat professionnel des infirmières et infirmiers de Trois-Rivières*². We will also provide employers with tools so they can optimally exercise their rights in connection with inquiries conducted by the *Commission des normes, de l'Équité et de la Santé et sécurité au travail* (the “**CNESST**”)³.

In addition we will comment on tips to follow and reflexes to adopt during hearings before arbitration tribunals and the Administrative Labour Tribunal (the “**ALT**”)⁴ in psychological harassment matters, in order to protect the employer’s interests.

This presentation is thus intended for managers who want to be up to speed on how the provisions in the LSA regarding psychological harassment are going to be applied over the second decade since they came into force.

B. Some statistics

Psychological harassment is definitely not a

problem that has been relegated to the past, as recent statistics clearly show. In March 2014, the *Institut de recherche en santé et en sécurité du travail* published the results of an investigation into the working population indicating that:

- 500,000 Quebec workers surveyed considered themselves to be exposed to psychological harassment in the workplace;
- 15% of Quebec workers surveyed claimed to have experienced psychological harassment during the most recent year worked⁵.

The CNT recently announced that it received 23,880 complaints of psychological harassment between June 1, 2004 and March 31, 2014⁶, i.e. an average of 2,400 per year. It also indicated that the number of investigations carried out was trending upwards, quantifying the increase at 15% between the year 2013-2014 and the year 2014-2015⁷.

A similar phenomenon has been observed by grievance arbitrators, who have noted a drastic increase in the number of arbitral awards involving psychological harassment. They estimate that, between 2000 and 2009, the number of arbitral awards dealing with a psychological harassment problem quadrupled⁸.

The consequences for businesses and organizations of this increase in the number of presumed victims of psychological harassment cannot be underestimated, even though most complaints of psychological harassment are settled privately or dismissed by the tribunal called upon to deal with them⁹.

Certain cases of psychological harassment result, justifiably or not, in a loss of productivity¹⁰ for the victim or even frequent and sometimes lengthy absences from work due to problems of a psychological nature¹¹. Laval University’s chair for occupational health and safety concluded that psychological health problems at work are the prime factors for the increase in absenteeism rates¹². An organization’s absenteeism rate is critical for its financial health, given that the resulting cost can be as much as 17% of total payroll¹³. In 2012, the Conference Board of Canada estimated that 452,000 workers could have joined the employment market in 2012 had they not been suffering from mental or emotional disorders.



This reduced participation in the job market costs the Canadian economy \$20.7 billion per year¹⁴.

“Certain cases of psychological harassment result, justifiably or not, in a loss of productivity for the victim or even frequent and sometimes lengthy absences from work due to problems of a psychological nature.”

It thus seems appropriate to view the prevention of psychological harassment as a means for improving an organization's absenteeism rate and allowing it to reduce the associated costs.

II. Definition of psychological harassment

A. Section 81.18 of the LSA: the five factors that must be established

The legislature sought fit to include a section containing a definition of psychological harassment in the LSA, in order to more narrowly circumscribe potential complaints. That section reads as follows:

81.18. *For the purposes of this Act, “psychological harassment” means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee’s dignity or psychological or physical integrity and that results in a harmful work environment for the employee.*

A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

Thus, in order to demonstrate that one is a victim of psychological harassment, a complainant must cumulatively establish the following factors:

- *vexatious behaviour;*
- *that is repeated;*
- *hostile or unwanted;*

- *affects an employee’s dignity or psychological or physical integrity, and*
- *results in a harmful work environment for the employee¹⁵.*

1. Vexatious behaviour

In 2006, shortly after the coming into force of the foregoing provisions, arbitrator François Hamelin rendered a leading arbitral award defining the concept of psychological harassment in the *Centre hospitalier régional de Trois-Rivières* case¹⁶. He objectively defined “vexatious behaviour” as consisting of attitudes and conduct including words, actions and gestures that “upset, abuse, humiliate or injure the self-esteem of a person to the point of torment”¹⁷, a definition that was followed and applied by subsequent arbitral tribunals and by the ALT. Malicious or culpable intent is thus not a factor taken into account by adjudicators¹⁸. Recently, arbitrator Joëlle L’Heureux found in 2016 that the mere fact that a complainant felt humiliated or injured by something that was said, or stressed by a particular situation, is not sufficient¹⁹.

Some examples of the various forms of vexatious behaviour meeting this criterion could include the following: intimidation of an employee by his or her superior, racist or sexist language directed at a colleague, systematic refusal to work with a colleague or routinely ignoring a colleague.

However, care must be taken not to confuse psychological harassment with management rights, as an employer has the right to manage its organization and its employees as it sees fit, and its management style cannot be considered psychological harassment, even if employees experience stress or unpleasantness²⁰. Thus, for example, an employer may legitimately:

- *insist that an employee improve conduct that is substandard or does not comply with workplace rules and policies²¹;*
- *directly require an employee to perform his or her work in accordance with a specific method²²;*
- *make administrative decisions affecting a group of employees for reasons of organizational management²³,*



- evaluate the employees' performance and quality of work;
- closely monitor the employees' work performance;
- impose disciplinary measures.

An exercise of the employer's management rights can only constitute psychological harassment if it is abusive or excessive²⁴ or unreasonable or discriminatory²⁵. In addition, the case law holds that perfection cannot be demanded in the workplace and recognizes that employers are entitled to make mistakes²⁶. Raising one's voice, being impolite or in a foul mood does not constitute psychological harassment where they occur in isolation.²⁷

2. Repeated behaviour

Absent one instance of vexatious behaviour that is sufficiently serious to have a lasting harmful effect on the victim, it will be necessary to show that the impugned behaviour of the alleged harasser recurred a sufficient number of times in a given period. There must thus be some "temporal continuity"²⁸ of the vexatious behaviour.

3. Hostile or unwanted conduct

The LSA uses the words "hostile or unwanted" in its definition of psychological harassment. The "hostile" criterion, in order to be met, requires aggressiveness, threats, scorn or derision²⁹ while the "unwanted" criterion requires proof of express or implied disapproval by the alleged victim.

4. Conduct that affects an employee's dignity or psychological or physical integrity

Proving the consequences of the impugned behaviour on the alleged victim of psychological harassment is essential, as the vexatious behaviour must have affected the dignity or psychological or physical integrity of the employee in such a way as to have "left marks or sequellae which, while not necessarily being physical or permanent, affect in more than a fleeting way the victim's physical, psychological or emotional equilibrium"³⁰.

Some adjudicators consider medical evidence

useful or even necessary to prove that the employee's dignity or psychological or physical integrity has been so affected³¹.

5. Conduct that results in a harmful work environment

The LSA also requires that situations allegedly constituting psychological harassment, in addition to affecting the dignity or psychological or physical integrity of the employee, must render the workplace "harmful, unhealthy or injurious" for the alleged victim³². The workplace must be distressing independently of the work duties that the employee performs, and must have become "unpleasant and intolerable on a daily basis"³³. The employee will also have to show that he or she has lost the esteem of his or her colleagues or is despised or shunned by them³⁴.

Ultimately, the takeaway here is that the required negative effect on the workplace is much broader than the mere occasioning of damage or harm to an employee resulting from a single instance of vexatious behaviour.³⁵

B. Employees protected by these provisions of the LSA

The Quebec legislature has afforded the protection against psychological harassment under the LSA to virtually all employees, unionized or not, including senior management personnel³⁶, and decreed that the LSA's provisions on psychological harassment are an integral part of every collective agreement³⁷.

C. Tribunals having jurisdiction over claims for psychological harassment

An instance of psychological harassment may give rise to a variety of recourses. On the one hand a complainant may institute proceedings in order for an adjudicator to acknowledge that he or she is a victim of psychological harassment and order remedial measures. A non-unionized employee must file a complaint with the CNESST within 90 days of the last instance of psychological harassment³⁸, and the CNESST must then decide if it will represent the complainant, without charge, before the ALT. Unionized employees must turn to their union, which may decide to file a grievance to be heard by a grievance arbitrator. On the other hand, in cases where the psychological harassment



results in an employment injury to the victim, a claim for indemnification based on the same set of facts may be filed with the CNESST, whether or not the employee is unionized. If the claim is denied, the decision of the CNESST may be taken before the ALT (occupational health and safety division) for judicial review.

It should be noted that the ALT (labour relations division) or, as the case may be, the grievance arbitrator will not be bound by the decision rendered by the ALT (occupational health and safety division). The Court of Appeal indicated in 2015 however that those adjudicators may take that decision into account in their analysis, and weigh its probative value³⁹.

III. Duties of the employer

With respect to psychological harassment, the Quebec legislature imposes on employers a two-pronged obligation: the duty to take reasonable means to prevent psychological harassment, and the duty to put a stop to it as soon as the employer becomes aware of it⁴⁰. It should be noted that this is an obligation of means and not of result⁴¹. This obligation is additional to those under the *Charter of Human Rights and Freedoms*⁴² and the *Civil Code of Québec*⁴³, whereby employers essentially have the duty to protect the health, safety, integrity and dignity of their employees while they are at work.



However, an employer's duties also extend beyond the workplace *per se* to any other location where work-related social or professional activities are held. An employer must also protect its employees from psychological harassment on the part of a superior or a colleague, as well as a supplier or client of the organization.

A. Preventive measures

1. Adopting and applying an internal policy

There is now no longer any question of the advisability of adopting a written policy on psychological harassment setting out assistance and redress mechanisms, as the majority case law is to the effect that such policies are a

reasonable means for preventing psychological harassment⁴⁴.

Experience has shown that the following guidelines should be followed when drafting such a policy:

- broadly define psychological harassment and the policy's scope of application (persons and locations covered by it);
- use a definition of psychological harassment that is as close as possible to that in section 81.18 of the LSA;
- provide a series of examples illustrating situations that could constitute psychological harassment and those that could not;
- set out the obligations of the employer, i.e. its duty to prevent any type of psychological harassment or put a stop to it;
- explain the procedure to be followed after the filing of a complaint;
 - designate a person in authority to ensure that procedure is followed;
 - indicate the possibility of mediation in certain circumstances;
- indicate the possibility of an investigation being conducted and describe the steps involved;
- indicate that any complaint which on its face is frivolous will be dismissed;
- specify the administrative or disciplinary sanctions that will be imposed if the policy is not respected.

As for the implementation of the policy, its success will be enhanced if it is known to and understood by the employees, and management has been fully made aware of its importance. To that end it is essential that the employer post the policy, obtain confirmation that employees are aware of it, and provide training on it⁴⁵. In a 2014 decision the CRT found that making the policy accessible via the organization's intranet portal was not a sufficient means for providing its employees with a workplace free from



psychological harassment⁴⁶. That same tribunal also concluded that an employer had not fulfilled its duty to prevent psychological harassment by merely informing its employees that it was prohibited, without explaining to them what it consisted of⁴⁷.

2. Other possible measures

Several other preventive measures can be adopted by employers, including the following:

- providing obligatory training on psychological harassment;
- having a uniform disciplinary process that is triggered when any conduct akin to psychological harassment is engaged in⁴⁸;
- implementing measures for rescuing the victim from isolation and integrating him or her into other employee groups⁴⁹.

B. How the employer can intervene

1. Filing a complaint

As the employer must take action to put an end to any instance of psychological harassment as soon as it becomes aware of the situation, it is highly recommended for employers to actively participate in an informal preliminary process aimed at resolving any adversarial or problematic situation by meeting with the employee allegedly at fault⁵⁰.

When preliminary resolution of the situation is impossible or inadequate, the employer should assist the victimized employee in filing a complaint so that the formal investigative process can get underway.

“When preliminary resolution of the situation is impossible or inadequate, the employer should assist the victimized employee in filing a complaint...”

The employer should also take steps to allow the victimized employee to continue to work while the investigation is ongoing. In several instances tribunals have considered employers to have taken reasonable measures to put a stop to the psychological harassment by reassigning the complainant or the alleged

harasser⁵¹ or by transferring the complainant to a different branch⁵².

2. Conducting an investigation

There are two approaches employers can take when faced with a situation of potential psychological harassment. The employer can call upon an internal resource or hire an outside investigator, depending on the nature of the problem. What is important is that the investigation be conducted expeditiously and transparently⁵³. In this latter connection, in one case it was deemed necessary to explain to the complainant the investigative process that would be followed and to provide her with the investigation's conclusions⁵⁴.

Does the employer also have a duty to provide the alleged harasser with a copy of the complaint? In principle, everyone has the right to be provided with any personal information that concerns him or her, other than personal information that also concerns another individual⁵⁵. However, the alleged harasser is not entitled to obtain information concerning the identity of the complainant or his or her witnesses, if such disclosure could seriously harm the complainant⁵⁶. The Access to Information Commission thus normally refuses to allow the alleged harasser to obtain a copy of the complaint and the complainant's statement⁵⁷.

An investigator may face a liability suit if any deficiencies are found with the investigation. In the case of *Ditomene v. Boulanger*⁵⁸, the plaintiff sued the investigator, who had concluded that he had engaged in psychological harassment. The Court of Appeal held that the investigator could not be found liable extra-contractually in this particular instance. The Court pointed out however that the employer or an investigator could be found liable if the investigation was negligently mishandled⁵⁹.

3. Measures to be taken pursuant to the conclusions of the investigation

The case law recognizes that disciplinary measures are a means to put an end to any type of violence or psychological harassment in the workplace. Arbitral tribunals have upheld the following disciplinary sanctions imposed on employees whose conduct or attitude approached or constituted psychological

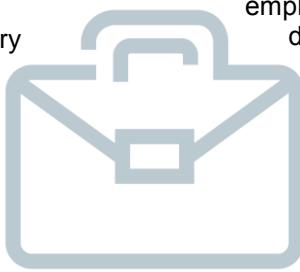


harassment:

- 10-day suspension and subsequent dismissal of a driver following two episodes of verbal abuse⁶⁰;
- dismissal of a warehouse clerk with a clean disciplinary record because of aggressive and threatening behaviour over a period of two and a half years (lack of remorse of the complainant was taken into consideration as an attenuating factor⁶¹);
- dismissal of a stock keeper for having fomented an unhealthy work environment through harassment, intimidation and threats⁶².

It is important to note that the disciplinary process must be begun before the investigation is over, where it is not necessary for shedding light on facts underlying the complaint. By way of example, in 2015 the CRT censured the City of Sherbrooke for not having taken reasonable measures to put an end to a harassment situation by not expeditiously initiating a process for imposing disciplinary measures⁶³.

The imposition of disciplinary measures, including temporarily relieving the alleged harasser of his or her duties or moving him or her to some other location in the workplace, could also be a reasonable measure for an employer to take, particularly where it is possible to transfer the alleged harasser⁶⁴.



IV. Judicialization

A. The new procedure followed by the CNESST

Unlike recourses for contesting dismissals (sections 122 to 123.1 and 124 LSA), the inquiry process for a psychological harassment complaint includes a filtering stage to exclude frivolous claims. Sections 103 and 123.8 of the LSA give the CNESST the mandate to conduct an inquiry into the situation complained of, and the discretion to refuse to proceed with a complaint that proves to be frivolous or in bad faith (s. 106 LSA) or groundless (s. 107 LSA). In this regard, in the few months preceding the

inauguration of the CNESST, the inquiry process substantially changed.

Thus, whereas in the past the investigator was authorized to disclose orally to the employer's representatives the substance of the allegations of the psychological harassment complaint, even before beginning to meet with witnesses, the new policy of the CNESST is not to disclose the allegations in the complaint at any time. Instead, the investigator confronts the employer's witnesses with a certain number of facts that are disclosed as required during the meeting with each witness.

While its inquiry is ongoing, the CNESST will not authorize witnesses to be accompanied by the employer's lawyer, except the one designated as the employer's representative. In addition, officially since January 1, 2016 but in practice since several months before then, the CNESST investigator will no longer go to the premises of the employer but will require the latter and its witnesses to attend at the offices of the CNESST.

Moreover, the new CNESST policy of not disclosing the substance of the complaint before the inquiry begins could likely withstand a challenge before the superior courts, as the LSA gives the investigator the same powers as a commission of inquiry⁶⁵. The CNESST could further defend its position in the event of a challenge by pointing out that the employer will potentially be convened subsequently to a hearing before the ALT during which it will have not only the opportunity to be informed of the substance of the complaint, but to be heard on each of the reproaches made against it by the complainant, thereby giving the employer the right to examine all the evidence, cross-examine witnesses, offer its own evidence and make arguments in its defence.

B. Circumscribing the evidence at hearings

1. Requests for particulars

The rules of natural justice require the party initiating the proceeding to inform the other party of the facts and circumstances underlying the proceeding. Before the ALT, the filing of a statement of the facts has become the norm for



framing the issues, and requests for further particulars are generally not granted⁶⁶. Before arbitral tribunals, a chronological account of the actions complained of and the identification of the persons involved⁶⁷ or a list in chronological order of the impugned actions⁶⁸ have been ordered.

An application to have the complaint dismissed will be granted by both the ALT⁶⁹ and arbitral tribunals⁷⁰ where the complainant or the complainant's union does not file the statement of facts or any further particulars ordered to be provided.

2. Requests for summary dismissal of the complaint or grievance

The employer may file a request to have the psychological harassment complaint or grievance dismissed when the facts on their face do not constitute psychological harassment. Such requests have been granted in numerous instances⁷¹.

V. Remedial powers of adjudicators of psychological harassment complaints

A. The statutory remedial framework

Section 123.15 of the LSA lists a variety of remedial measures available to adjudicators who conclude that an employee has been the victim of psychological harassment, namely:

- reinstatement of the victimized employee;
- taking action to put a stop to the harassment;
- paying the employee an indemnity for lost wages or loss of employment, or as punitive or moral damages;
- paying for psychological support required by the employee;
- modifying the employee's disciplinary record.

B. Monetary indemnities generally awarded

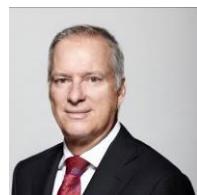
Our review of the decisions since 2013 where moral and/or punitive damages have been awarded indicates that the amounts adjudicators have ordered employers to pay are relatively low. The amount of moral damages awarded by tribunals during this period never exceeded \$20,000, and the maximum amount of punitive damages awarded was \$15,000.

C. Other remedial measures ordered

The case law shows that adjudicators will not hesitate to be creative. By way of illustration, the following orders have been rendered against employers after a complaint or grievance alleging psychological harassment was upheld:

- provide the victim of the harassment with a letter acknowledging the employer's mistake and reiterating its confidence in the employee's integrity⁷²;
- conduct a further investigation⁷³;
- provide sensitization and training activities on psychological harassment issues within eight months, failing which \$20,000 in punitive damages will be assessed⁷⁴;
- reimbursement of the expenses entailed by holding the hearings (including simultaneous interpretation, travel, meals and lodging costs)⁷⁵.

Written by



André Sasseville
Lawyer, Partner
+1 514 282 7840

andre.sasseville@langlois.ca



Kassandra Church
Lawyer
+1 514 282 7801

kassandra.church@langlois.ca



Notes

¹ CQLR, c. N-1.1

² January 1, 2006, AZ-50350462

³³ Before January 1, 2016, this tribunal was called the *Commission des normes du travail* and the *Commission de la santé et sécurité du travail* (the “CNT”).

⁴ Before January 1, 2016, this tribunal was called the *Commission des relations du travail* (the “CRT”).

⁵ Institut de recherche en santé et en sécurité au travail, *Prévention de la violence interpersonnelle en milieu de travail. Ça nous concerne tous!*, on line: Institut de recherche en santé et en sécurité au travail (IRSST) (<http://www.irsst.qc.ca/prevention-violence/concernnes.html>)

⁶ Dominique Froment, *Harcèlement : 40% des plaintes rejetées*, on line: Les Affaires (<http://www.lesaffaires.com/secteurs-d-activite/general/harcelement-40-des-plaintes-rejetees/569902>)

⁷ Commission des normes du travail, *Rapport annuel de gestion 2014-2015*, on line: Commission des normes du travail (CNT) (http://www.cnt.gouv.qc.ca/fileadmin/pdf/publications/c_0296.pdf).

⁸ Dominique Jarvis and Solange Pronovost, *La prévention du harcèlement: trois stratégies pour agir à la source*, in *Le harcèlement psychologique au travail 2004-2014: de la prévention à la résolution*, Yvon Blais, Cowansville (QC), 2014, p. 52

⁹ The CNESST indicated in 2014 that only 5% of complaints filed were adjudicated.

¹⁰ Such a loss in productivity was estimated at 7% by an inter-ministerial committee in 2003: Comité interministériel sur la prévention du harcèlement psychologique et le soutien aux victimes, *Une stratégie de prévention du harcèlement psychologique au travail et de soutien aux victimes*, on line: Comité interministériel sur la prévention du harcèlement psychologique et le soutien aux victimes (https://www.travail.gouv.qc.ca/fileadmin/fichiers/Documents/normes_travail/harcelement_psychologique/Stratprevharclement.pdf).

¹¹ Towers Watson calculated the savings for an organization, in terms of employee benefits, resulting from sound strategies to prevent psychological health problems at \$551 per employee (Tower Watson, *Sondage au travail*, 2011-2012).

¹² Université Laval, Chaire en gestion de la santé et de la sécurité du travail, *La santé psychologique au travail : Les conséquences du stress – Conséquences pour l'organisation*, on line: Université Laval, Chaire en gestion de la santé et de la sécurité du travail (<http://www.cgsst.com/fra/publications-sante-psychologique-travail.asp>). See also Dominique Jarvis and Solange Pronovost, *La prévention du harcèlement : trois stratégies pour agir à la source*, in *Le harcèlement psychologique au travail 2004-2014: de la prévention à la résolution*, Yvon Blais, Cowansville (QC), 2014, p. 53.

¹³ The costs associated with the rate of absenteeism include overtime, the cost of replacing the absent employee and lost productivity. Université Laval, Chaire en gestion de la santé et de la sécurité du travail, *La santé psychologique au travail : Les conséquences du stress – Conséquences pour l'organisation*, on line: Université Laval, Chaire en gestion de la santé et de la sécurité du travail (<http://www.cgsst.com/fra/publications-sante-psychologique-travail.asp>).

¹⁴ Current Issues in Mental Health in Canada: The Impact of Mental Illness, publication no. 2013-87-E (27 September 2013), Raphaëlle Deraspe (Economics, Resources and International Affairs Division - Parliamentary Information and Research Service)

¹⁵ See for example the decision in *Bangia v. Nadler Danino, s.e.n.c.*, 2006 QCCRT 0419 (Guy Roy, commissioner) at para. 76 for a more detailed definition of these criteria.

¹⁶ *Centre hospitalier régional de Trois-Rivières (Pavillon St-Joseph) v. Syndicat professionnel des infirmières et infirmiers de Trois-Rivières*, D.T.E. 2006T-209 (T.A.), (François Hamelin, arbitrator). (Note 2)

¹⁷ *Centre hospitalier régional de Trois-Rivières (Pavillon St-Joseph) v. Syndicat professionnel des infirmières et infirmiers de Trois-Rivières*, D.T.E. 2006T-209 (T.A.), (François Hamelin, arbitrator), at paras. 164-165. (Note 2)

¹⁸ On this question see *De Varennes v. Centre de services partagés du Québec*, 2016 QCCFP 5 (Nour Salah, commissioner), para. 78, *Gendron v. Agence de revenu du Québec*, 2015 QCCRT 0095 (Myriam Bédard, administrative judge), para. 114, *Lachapelle-Welman v. 3233430 Canada Inc. (Porte et fenêtres ADG)*, 2016 QCTAT 3557 (François Caron, administrative judge), para. 110, *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

¹⁹ *Syndicat de l'enseignement de la Rivière-du-Nord v. Commission scolaire de la Rivière-du-Nord*, SAE 9088 (Joëlle L'Heureux, arbitrator), at para. 117

²⁰ *Charbonnier v. Strome's Entreprises Ltd.*, D.T.E. 2008T-117, (C.R.T.) (Jean Paquette, commissioner) at paras. 75-77.

²¹ *Syndicat des travailleuses et travailleurs du Centre de santé et de services sociaux de Laval (FSSS-CSN) v. Centre de santé et de services sociaux de Laval*, D.T.E. 2014T-192 (T.A.) (René Beaupré, arbitrator), at paras. 184, 187-188.

²² *Union des employés et employées de service, section locale 800 v. Commission scolaire English Montréal*, SAE 8462, (François G. Fortier, arbitrator), at pp. 28-29 (confirmed by the Superior Court 500-17-066469-118).

²³ *Syndicat de l'enseignement de la Rivière-du-Nord v. Commission scolaire de la Rivière-du-Nord*, SAE 9088 (Joëlle L'Heureux, arbitrator)

²⁴ *Rio Tinto Alcan, usine Alma v. Morency*, 2014 QCCS 4601, at para. 81 (granting the motion for judicial review and dismissing the grievance allowed by the arbitrator)

²⁵ *Charbonnier v. Strome's Entreprises Ltd.*, D.T.E. 2008T-117, (C.R.T.) (Jean Paquette, commissioner) at paras. 75-77.

²⁶ *Alliance du personnel professionnel et technique de la santé et des services sociaux v. Centre hospitalier universitaire de Sherbrooke*, 2015 CanLII 60288 (T.A.) (André G. Lavoie, arbitrator), at para. 295.

²⁷ *Hrab v. Restaurant La Savoie inc.*, D.T.E. 2016T-707, (T.A.T.) (Alain Turcotte, administrative judge) at para. 143, *Travailleuses et travailleuses unis de l'alimentation et du commerce, section locale 486 v. Supermarché Gilbert Tremblay inc.*, D.T.E. 2004T-920 (T.A.) (Michael Bendel, arbitrator), at pp. 6-7 and 9; *Syndicat des employées et employés professionnels et du bureau, section locale 574 v. La Presse*, D.T.E. 2010T-29 (T.A.) (Nathalie Faucher, arbitrator).

²⁸ *Nadler Danino*, at para. 81. See also *Commission scolaire de la Rivière-du-Nord*, at para. 116.

²⁹ *McGill University Non-Academic Certified Association (M.U.N.A.C.A.) v. Université McGill*, [2006] R.J.D.T. 1797 (T.A.) (Jean-Pierre Lussier, arbitrator)

³⁰ *Nadler Danino*, at para. 90.

³¹ *Travailleuses et travailleurs unis de l'alimentation et du commerce, section locale 501 v. Sobeys Québec inc. (“Sobeys”)*, D.T.E. 2012T-771 (T.A.) (Noël Mallette, arbitrator), at para. 215, *Syndicat des travailleuses et des travailleurs des centres de la petite*



enfance de Montréal et de Laval v. CPE Luminou, D.T.E. 2006T-582 (T.A.) (Noël Mallette, arbitrator), *A v. L...B...*, 2007 QCCRT 0332 (Pierre Flageole, Bernard Marceau, André Michaud, commissioners), *Travailleurs et travailleuses unis de l'alimentation et du commerce – tuac local 500 v. 9008-4062 Québec inc.*, 2010 CanLII 75172 (T.A.) (Claude Martin, arbitrator).

³² *Nadler Danino*, at para. 91.

³³ *Syndicat des employées et employés de métier d'Hydro-Québec, section locale 1500 SCFP-FTQ v. Hydro-Québec*, D.T.E. 2008T-74 (T.A.) (Marc Gravel, arbitrator), at para. 252

³⁴ *Sobeys*, supra note 30 at paras. 214 and 216

³⁵ *Centre hospitalier régional de Trois-Rivières (Pavillon St-Joseph) v. Syndicat professionnel des infirmières et infirmiers de Trois-Rivières*, D.T.E. 2006T-209 (T.A.), (François Hamelin, arbitrator), at para. 181.

³⁶ Section 3 (6) LSA

³⁷ Section 81.20 LSA

³⁸ Section 123.7 LSA

³⁹ *Durocher v. Commission des relations du travail*, 2015 QCCA 1384, at para. 119

⁴⁰ Section 81.19 LSA

⁴¹ *Rio Tinto Alcan, usine Alma v. Morency*, 2014 QCCS 4601, at para. 89 (granting the motion for judicial review and dismissing the grievance allowed by the arbitrator)

⁴² Section 46

⁴³ Article 2087

⁴⁴ In this regard see *Alliance des professeures et professeurs de Montréal v. Commission scolaire de Montréal*, 2014EXPT-1178 (T.A.) (Paul Charlebois, arbitrator), at para. 123.

⁴⁵ *Gougeon v. Cheminées Sécurité International Itée*, 2010 QCCRT 0120 (Arlette Berger, administrative judge), at para. 105

⁴⁶ *Verreault v. ArcelorMittal Canada inc.*, 2014 QCCRT 0009, at para. 194

⁴⁷ *Caririer v. Mittal Canada inc.*, 2009 QCCRT 0533 (Mario Chaumont, administrative judge), at paras. 238-241.

⁴⁸ *Mercier v. Sherbrooke (ville de)*, 2015 QCCRT 0415 (Pierre Flageole, administrative judge)

⁴⁹ See, a contrario, *Lopez v. Costco Wholesale Canada Ltd*, 2012 QCCRT 0491 (Esther Plante, administrative judge).

⁵⁰ *Goulet v. Coopérative de services à domicile Beauce-Nord*, 2012 QCCRT 0580 (Myriam Bédard, administrative judge), at paras.

⁷¹ et seq.: example of irreproachable conduct on the part of an employer informed of a problematic situation.

⁵¹ *Syndicat des agents de la paix en services correctionnels du Québec v. Ministère de la sécurité publique*, 2013 CanLII 23485 (T.A.) (Yvan Brodeur, arbitrator)

⁵² *Syndicat de la fonction publique du Québec – unité ouvriers v. Québec (gouvernement du) (Ministère des transports)*, D.T.E. 2012T-50 (T.A.) (Claudette Ross, arbitrator)

⁵³ *Gendron v. Agence de revenu du Québec*, 2015 QCCRT 0095 (Myriam Bédard, administrative judge), at para. 136

⁵⁴ *Roberge v. Ville de Montréal, arrondissement Côte-des-Neiges – Notre-Dame-de-Grâce*, 2015 QCCRT 0158 (France Giroux, administrative judge), at para. 110

⁵⁵ *Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information*, CQLR, c. A-2.1, section 88, and *Act respecting the Protection of Personal Information in the Private Sector*, CQLR c. P-39.1, section 40

⁵⁶ *Ibid.*

⁵⁷ *M.D. v. Cégep A*, 2013 QCCAI 4, at paras. 55 et seq., *M.R. v. Centre intégré de santé et de services sociaux de Laval*, 2016 QCCAI 156, at para. 53., *D.P. v. Cégep Saint-Jean-sur-Richelieu*, 2013 QCCAI 189, at paras. 56 et seq.

⁵⁸ 2014 QCCA 2108

⁵⁹ *Ibid.* at para. 30

⁶⁰ *Teamsters Québec, section locale 1999 v. TST Overland Express*, D.T.E. 2012T-759 (Jean-François La Forge, arbitrator)

⁶¹ *Boudreault v. D. Bertrand & Fils Inc.*, 2007 CanLII 4596 (T.A.) (Carol Girard, arbitrator)

⁶² *Syndicat des employées et employés de métier d'Hydro-Québec, section locale 1500 SCFP-FTQ v. Hydro-Québec*, D.T.E. 2008T-74 (T.A.) (Marc Gravel, arbitrator), at para. 252

⁶³ *Mercier v. Sherbrooke (ville de)*, 2015 QCCRT 0415 (Pierre Flageole, administrative judge) at paras. 147-152.

⁶⁴ *Syndicat de la fonction publique du Québec – unité ouvriers et Québec (Gouvernement du) (Ministère des Transports)*, D.T.E. 2012T-50 (Claudette Ross, arbitrator) and *Syndicat des agents de la paix en services correctionnels du Québec v. Ministère de la sécurité publique*, 2013 CanLII 23485 (T.A.) (Yvan Brodeur, arbitrator)

⁶⁵ Section 108

⁶⁶ *Tolley v. Centre Wanaki*, 2015 QCCRT 701 (Jean Paquette, administrative judge), at paras. 34-36, *Masson v. Magasins Wal-Mart Canada*, 2007 QCCRT 452 (Hélène Bédard, commissioner), at paras. 48 et seq.

⁶⁷ *Union des employés et employées de service, section locale 800 v. Les jardins du souvenir (les cimetières catholiques romains de l'archidiocèse de Gatineau)*, 2009 CanLII 84649 (T.A.) (Claude Martin, arbitrator) at para.14; *Syndicat canadien de la fonction publique v. Commission scolaire de la Seigneurie-des-Mille-Îles*, D.T.E. 2006T-847 (T.A.) (Gilles Ferland, arbitrator)

⁶⁸ *Alliance de la fonction publique du Canada v. Aéroports de Montréal*, D.T.E. 2008T-86 (T.A.), at para. 64

⁶⁹ *Abergel v. Sears Canada inc.*, 2012 QCCRT 0080 (Pierre Flageole, commissioner)

⁷⁰ *Syndicat international de travailleurs et travailleuses de la boulangerie, confiserie et du tabac, section locale 333 v. Sucre Lantic Itée (raffinerie de Montréal)*, D.T.E. 2007T-763 (T.A.) (Diane Fortier, arbitrator), *Syndicat canadien de la fonction publique, section locale 4503 v. Ville de La Prairie, AZ-5019707* (T.A.) (André Cournoyer, arbitrator), *Syndicat canadien de la fonction publique, section locale 2294 v. Ville de Châteauguay*, D.T.E. 2002T-1042 (Bernard Bastien, arbitrator)

⁷¹ *Syndicat canadien des communications de l'énergie et du papier, section locale 124 v. Servichem inc.*, 2008 CanLII 32333 (arbitrator François Hamelin), *Syndicat des enseignantes et enseignants des Laurentides v. Commission scolaire des Laurentides*, SAE 8613 (T.A.) (2013) (Jean-François Laforge, arbitrator), *Bangia v. Avoman*, 2016 QCTAT 7255 (Pierre Flageole, administrative judge). The request was however denied in *Association professionnelle du personnel administratif inc. v. Commission scolaire de Montréal*, SAE 8868 (T.A.) (Maureen Flynn, arbitrator).

⁷² *Alliance des professionnelles et professionnels de la Ville de Québec v. Ville de Québec*, D.T.E. 2007T-289 (T.A.) (Pierre A. Fortin, arbitrator)

⁷³ *Syndicat des fonctionnaires municipaux de Montréal v. Ville de Montréal*, D.T.E. 2009T-72 (T.A.) (Fernand Morin, arbitrator)



⁷⁴ *Commission scolaire des Hautes-Rivières v. Rondeau*, D.T.E. 2015T-683 (S.C.) (confirming the arbitral award rendered by Claude Rondeau, arbitrator)

⁷⁵ *Orantes Silva et al. v. 9009-1729 Québec inc.*, 2016 QCTAT 2155 (André St-Georges, administrative judge), at para. 159