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EDITORIAL

Student violence against school personnel: CNESST inspectors can intervene

Me Lydia Fournier and Me Benoît Labrecque, Le Corre Lawyers

Violence against teachers and school support staff ("school personnel") by students is a serious issue. In fact, not a week goes by without a media report of an event involving violence by a student against school personnel.

This violence can take many forms. It can take the form of insults, threats, hateful comments, or even physical aggressions. Punching, kicking, slapping or throwing objects are all experiences that school personnel have experienced across all regions of Quebec.

Moreover, you have certainly already heard in the media that CNESST inspectors have recently intervened in schools in connection with these situations of violence. Indeed, the new provisions of the *Act respecting occupational health and safety*[1] give the CNESST greater power to intervene in cases of violence, since it is now expressly stipulated that employers must protect the employees that are exposed to physical or psychological violence:

> Every employer must take the necessary measures to protect the health and ensure the safety and physical and mental well-being of his worker. He must, in particular,
>
> (16) take the measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace.[2]

Some unions are stepping up their media outreach to request more interventions by the CNESST in situations of violence in schools. While these situations could previously result in the management of employment injury claims, we believe that you may now, in addition, be called upon to deal with CNESST inspections in schools. Also, following an inspection related to an incident of violence in a school, it is not excluded that the CNESST extends its intervention in several of your other schools.

These visits may be motivated by various reasons: a complaint from a worker, an industrial accident, a request for assistance, or even a simple intervention planned as a preventive measure in order to communicate the necessary action plans in the workplace and to have them applied. In all cases, the inspector who notices a danger that could have consequences on the health and safety of workers has the obligation to intervene. Therefore, he could issue notices of exemption and require corrective measures to make the work environment safe.

For example, the CNESST could require that training specific to situations of violence on the part of students be provided to all school personnel working directly with students and, more specifically, to those working in specialized classes[3]. Incidentally, in order to ensure a monitoring of the trainings, the CNESST could require the keeping of an up-to-date training log in this regard.

The layout of the premises and the equipment in them could also be analyzed by the CNESST during an inspection, particularly the premises of specialized classes for students with special needs. Indeed, an inspector could require that the premises be rearranged or that certain objects be moved and kept in a safe place or one that is less easily accessible by students in crisis[4]. Finally, the presence of protective equipment in schools could also be questioned by the CNESST[5], particularly for staff working in specialized classes with students at risk of disorganization and crisis.

Since prevention is often your best ally, it may be appropriate to put in place additional means to reduce the risk of violent behaviours by students and their consequences.

You must keep in mind that your obligation to protect the health and ensure the safety and physical and mental well-being of your school personnel is one of means and not of result. Indeed, zero risk in terms of violence is difficult to attain, particularly because of the unpredictable nature of certain violent behaviours on the part of students, or because of the characteristics of the clientele that makes up the specialized classes. To meet your health and safety obligations, the implementation of measures should aim to reduce the frequency and severity of violent behaviours.

1. CQLR, c. S-2.1 (« AOHS »)
2. Section 51 (16) AOHS
3. Section 51 (9) AOHS
4. Section 51 (1)(4) AOHS
5. Section 51 (11) AOHS

RECENT DECISIONS

1 The nonchalance and indifference of a superior constituted psychological harassment

A certified maintenance worker alleged that he was harassed by his immediate supervisor. The evidence showed that the latter was negligent and showed laxity. He did not intervene even though the employee had repeatedly complained to him that the sawmill bench he had to use did not meet the safety standards. He also demanded that the employee do some work before an asbestos test could be conducted. Just because there is no verbal or physical altercation does not mean it is not harassment. The manager's nonchalance and indifference under the circumstances is an expression of contempt and constitutes harassment. The employer's obligation to prevent harassment requires it to be on the lookout at all times. It cannot claim that the employee's denunciation was not clear or merely remind the manager of its expectations. The grievance is upheld.

Cégep Bois-de-Boulogne et *Syndicat du personnel de soutien du collège Bois-de-Boulogne*
SAE 9656, 2023-03-21, Claire Brassard

2 Previous experience, while interesting, was not directly related to the functions

The employee was promoted to the position of rehabilitation officer. The union blamed the employer for not taking into account the experience she had as a daycare technician before her promotion and for applying the rules governing her former position to determine her salary level. For its part, the employer argued that the employee had no experience directly relevant to the performance of her function as a professional and that it granted her the salary level above the wage rate she was receiving as a technician, in order not to penalize her monetarily. According to the arbitrator, the employer was justified in considering that the employee had no direct relevant experience that would allow it to grant her additional salary levels. The nature of the work between the two job classes is fundamentally different and, while there is some relevance and linkage to the new position, the previous experience is not directly relevant to the rehabilitation officer position. The grievance is dismissed.

Syndicat des professionnelles et professionnels de l'éducation de Laurentides-Lanaudière et *Centre de services scolaire de la Rivière-du-Nord*
2023EXPT-384, 2023 QCTA 27, Éric-Jan Zubrzycki

3 Breaks must be paid

Based on section 57 of the *Act respecting labour standards*, the union argued that occasional substitute teachers, teachers-by-the-lesson and hourly paid teachers should be paid for their break or recess time between teaching periods. The employer objected on the grounds that the union was challenging a well-established practice, that this time was already included in the compensation paid and that it was not time worked. The argument regarding past practice cannot be accepted since the dispute is based on a provision of public order. As for the compensation paid to the teachers, the evidence showed that it does not include break or recess time between two teaching periods. Also, the three conditions for the application of section 57 of the ALS are satisfied since the teachers are available to the employer, on the work site and must wait for work. The grievances are therefore upheld.

Syndicat de l'enseignement de la région des Moulins c. *Commission scolaire des Affluents (Centre de services scolaire des Affluents)*
2023EXPT-479, 2023 QCTA 43, Andrée St-Georges
Pourvoi en contrôle judiciaire, 2023-02-24 (C.S.) 705-17-010698-23

RECENT DECISIONS

4 Barely in office, he always tried to do as little as possible: dismissal maintained

A special education technician challenged the disciplinary suspensions imposed on him and his dismissal. He believes that the employer is persecuting him for the sole purpose of getting rid of him, and he alleges that he was the victim of psychological harassment by two representatives of the employer. Only a few weeks after his arrival, dissatisfaction with the employee's work and his behaviour had already been raised, particularly with regard to the use of cell phone and additional break periods. The employee had a careless and negligent attitude, only partially performed his duties and always tried to do as little as possible. The employer demonstrated that the reproaches made were well-founded. As for the imposition of several disciplinary sanctions, this cannot constitute psychological harassment insofar as the interventions are founded, which is the case here. The grievances are rejected and the dismissal is maintained.

Centre de services scolaire de Montréal et *Association professionnelle du personnel administratif inc.*
SAE 9652, 2023-03-09, Pierre-Georges Roy

5 Violently assaulted by a 2nd grade student: cost transfer granted

The employer challenges the denial of a cost transfer. A teacher suffered a professional psychological injury as a result of an intervention in which she was beaten on her legs and abdomen and bitten by a 2nd grade student. The force used by the student was so significant that the employee suffered vaginal blood loss in the days that followed. In this case, the employer's mission is to provide teaching services, including to a clientele with special needs. In this context, any manifestation of aggressiveness is not necessarily unrelated to the risks that he must bear. However, when the aggression is unforeseeable, unusual, exceptional and unlikely, or when it goes beyond the normal framework of the teacher-student relationship, a transfer will be granted. In this case, the aggression is marked by significant violence due to the repetition of the gestures, the force used and the anatomical sites targeted. Given these exceptional circumstances of an extraordinary and unusual nature, cost transfer is granted.

Centre de services scolaire de l'Énergie
2023EXPT-755, 2023 QCTAT 1178 (SST), Jean-François Dufour

6 He injured himself during a weekend training session: his claim is rejected

The employer challenges the admissibility of a claim for an occupational injury. A physical education teacher suffered a fractured malleolus and ankle while attending a first aid training in remote areas during the weekend. The employer alleged that the event did not occur in the course of work, considering that the training took place on the weekend, outside of work hours, and that the employee was not paid or under its authority. In this case, while the training may have been relevant, it was not mandatory and was not a prerequisite for his employment. The training was not provided, organized or planned by the employer. Furthermore, the employer did not ask him to participate in the training, nor did he encourage him to do so. The employee voluntarily chose to attend the training. Given these circumstances, the event did not occur in the course of work. The employer's challenge is upheld.

Centre de services scolaire de la Capitale et *St-Laurent*
2023 QCTAT 1543 (SST), Sophie Sénéchal