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EDITORIAL

Professional autonomy and psychological harassment: two different concepts

Me Lydia Fournier, Le Corre Lawyers

As managers in the education sector, you have probably already been confronted with demands from teachers or professionals concerning their professional autonomy. This topic was discussed in two recent decisions involving claims of psychological harassment.

In the first case[1], a teacher alleged that he had been harassed by members of the management team. He alleged that the college had imposed unjustified supervision on him by threatening him with disciplinary measures and seeking to control his freedom to teach. The Court concluded that the college had exercised its rights in a reasonable manner by imposing strict supervision on the teacher, who was in difficulty and unwilling to comply with the educational program.

With regard to the professional autonomy claimed by the plaintiff, the Court specified that the college, given its right of management, had broad autonomy to carry out its educational mission. It could impose standards and methods, and control the work performance of its teachers in order to comply with the Ministry's program and its educational values. In exercising this control, the college had not harassed the complainant:

> [Translation] [70] The Court understands from the factual background that the conflict between the complainant and the management is based above all on a difference of opinion as to the role, rights and obligations of a teacher. The complainant claims an autonomy that is incompatible with the College's responsibilities. Moreover, his assessment of his work performance is quite different from that of the College. As a result, he has to submit to a series of measures that he perceives as unfair and humiliating. This situation is undoubtedly anxiety-provoking, but it does not meet the definition of psychological harassment.

In the second case[2], a speech therapist alleged that she had been harassed by the teacher with whom she had been paired. It should be pointed out that this situation took place in a context where no teacher wanted to be paired with the complainant, past experience having shown that the latter had a propensity for analyzing the work performance of the teacher with whom she was paired rather than exercising her role as consulting specialist. The arbitrator first concluded that the conflict between the speech therapist and the teacher did not constitute harassment. Rather, it's a battle of power in which the plaintiff, invoking her expertise, claims to be "muzzled" in her work, while the teacher believes that she alone is responsible for her class.

The arbitrator also addressed the grievor's allegations that the school service center had unduly limited her professional autonomy. According to the arbitrator, the center could establish a framework that would allow the collaboration between the complainant and the teacher with whom she had been paired to continue. As a manager, the center had the right, and even the duty, to apply alternatives to the usual modus operandi to prevent the conflict between the two employees from escalating. Finally, the center could require the two employees to use a particular work method to meet specific needs, without violating their professional autonomy. With regard to the center's intervention to oversee the collaboration between the two employees, the Court wrote as follows:

> [Translation] [208] The employer may control this professional autonomy as long as its management rights are not exercised unreasonably, abusively or in bad faith. And, from the evidence presented, this is exactly what the school center did by supervising the collaboration between the teacher and the professional, when the two were in open conflict, to prevent the situation from escalating and creating an unhealthy, hostile or unwanted environment that could harm the integrity or dignity of either of the people involved.

These decisions confirm that the defense of professional autonomy, often invoked to challenge the imposition of pedagogical supervision or expectations concerning course planning, evaluation methods, classroom management or behavior towards colleagues, is of little value. The relationship of subordination arising from the employment contract authorizes the employer, pursuant to its management rights, to oversee the work of a teacher or professional if it has reasonable grounds to doubt the quality of the work performed, or to manage a conflictual situation in order to prevent it from degenerating into psychological harassment. The success of your interventions lies in their reasonableness and objectivity.

1. *Morris* v. *Collège Mont-Sacré-Cœur*, 2024EXPT-44, 2023 QCTAT 4910
2. *Syndicat des professionnel(le)s du milieu de l'éducation de Montréal* and *Centre de services scolaire de Montréal*, 2024EXPT-213, 2023 QCTA 529

RECENT DECISIONS

1 Threat of disciplinary measures: employer interfered with union activities

The union filed a complaint alleging that the college interfered with its activities by sending a letter to the union executive threatening to discipline its representatives. Following a heated parity meeting in which criticisms of the director's work and the work climate were voiced, the employer sent a letter to the executive stating: "No disciplinary measures will be filed (…) but such behaviour must not be repeated." (Our translation). Although the employer could indicate that he wished, in the future, for meetings to be conducted differently, the Court concluded that this letter contained a threat to impose disciplinary measures and that such action constituted hindrance. Although the executive's comments may have been hard to hear, they remained within the limits of the union's freedom of expression. The employer could not invoke the subordinate relationship simply because he disagreed with the executive's comments. The complaint was upheld.

Association des professeurs du Collège français – Annexe Sud v. *Collège français primaire inc.*
2023EXPT-2185, 2023 QCTAT 4479, Maude Pepin Hallé

2 The wording of the local agreement deprived the employer of its discretionary power

The union filed a grievance following the employer's refusal to grant certain leaves supported by a medical recommendation. According to a directive adopted by the employer, leave requests had to be made on a day/cycle basis, and not on a day/week basis, particularly to facilitate replacements and the integration of young teachers. However, according to the local agreement, a leave request supported by a medical recommendation had to be granted by the employer whether the request was for a day/cycle or not. Concluding first that the grievance was of a continuing nature, the arbitrator found that the employer lost its discretionary power when a request for leave was supported by a medical recommendation. The employer's proposed accommodation of leave on a day/cycle basis was therefore inconsistent with the local agreement. The arbitrator added that granting requests on a day/week basis did not constitute undue hardship, especially since requests for leave with a medical recommendation represented only a small proportion of requests. Given that part of the claim was prescribed, the arbitrator partially upheld the grievance.

Syndicat de l'enseignement de la région de Québec and *Centre de services scolaire des Premières-Seigneuries*
2023EXPT-1912, 2023 QCTA 378, Robert L. Rivest

3 Assigning tasks does not create the right to choose a position

A special education technician alleged that her employer had not assigned her the proper position she had chosen at the last virtual assignment session, and claimed that he had misled her in her choice of position. In fact, after obtaining her work assignment, the employee was informed that, as a technician, she would be partly assigned to a withdrawal class for students with adaptation or behavioural difficulties. This assignment did not suit her, since the desired intervention with this type of clientele is curative rather than preventive in nature. The arbitrator concluded that the employer was properly exercising its management rights by assigning the employee to the withdrawal class, since it did not modify the nature of her job class. He also added that the assignment session had followed the usual procedure and that the assignment of tasks does not create the right to choose a position. The grievance was dismissed.

Centre de services scolaire Marie-Victorin and *Syndicat des employées et employés professionnels-les et de bureau, section locale 578*
2023 EXPT-2244, 2023 QCTA 466, Pierre Daviault

RECENT DECISIONS

4 His inability to maintain harmonious relations justified the termination of his contract

A teacher contests the termination of his employment agreement for "incapacity and/or misconduct and/or insubordination". He claims that this constitutes retaliation for his testimony in another case. The evidence showed that the employee had been unable to perform work for more than seven years, and that a return to work within a reasonably foreseeable future could not be envisaged. The evidence also showed that, despite a disciplinary sanction imposed years earlier, the employee persists in denying any wrongdoing on his part and does not acknowledge his responsibility for the psychological harassment he inflicted on colleagues. The employee is unable to maintain harmonious and respectful relations with his colleagues, and no form of support could have led him to modify his behaviour. The decision to terminate the employee's employment was not abusive, unreasonable or in bad faith. The grievances were dismissed.

Centre de services scolaire de la Riveraine and *Syndicat des enseignantes et enseignants de la Riveraine*
2023 EXPT-2032, 2023 QCTA 424, M[e] Serge Brault

5 No employment injury: performance appraisal was reasonable

A teacher with 20 years of experience alleged that he had suffered a psychological employment injury. After receiving several complaints about the employee, the employer initiated a performance assessment process. Significant performance weaknesses were identified, including a lack of clarity in explanations and a lack of understanding of the material being taught. The employee took part in several feedback meetings, received support from his union and benefited from various assistance measures. However, given the lack of progress observed over a three-year period, the employer put an end to the process and terminated him. Without denying that this can be stressful, the Court believes that the centre's interventions were justified. This was not an unreasonable exercise of management rights, nor was it outside the normal scope of work. Claims that the employer acted in bad faith are based on subjective perceptions. In such circumstances, there can be no question of an unforeseen and sudden event. The claim is denied.

Sabbagh v. *Centre de services scolaire de Montréal*
2023 EXPT-2278, 2023 QCTAT 4710 (SST), Renaud Gauthier

6 Insulted by a student's mother: cost transfer granted

The employer contests the refusal of a cost transfer relating to a psychological employment injury suffered by a teacher. During an individual meeting following the release of school report cards, the employee was the victim of unfounded denigrating and devaluing remarks made by the mother of a student. The mother attacked her personally, criticized her work and even insinuated that she was incompetent and jealous of other teachers. In these circumstances, it appears that it was only the vindictive and disrespectful behaviour of this third party that was responsible for the employment injury. Although the employer's activities include parent-teacher meetings, and it is likely that some negative comments will be received on such occasions, the attacks directed at the employee far exceeded the acceptable level of criticism a teacher should expect. The particular circumstances of this case can be described as unusual and essentially unrelated to the risks to be borne by the employer. The transfer of costs is granted.

Centre de services scolaire des Rives-du-Saguenay
2024 QCTAT 326 (SST), Chantale Girardin