DENTONS

Employment and Labour Law

Review of landmark decisions rendered in 2024 | Québec

January 2025

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The year 2024 saw several significant judicial decisions shaping the landscape of labour and employment law. In the following pages, we present the key highlights from a dozen rulings by the Québec Court of Appeal and Superior Court, the Human Rights Tribunal, the Administrative Labour Tribunal and a grievance arbitrator. These decisions address critical topics such as constructive dismissal, dismissal for poor performance, pregnant worker reassignment, discriminatory refusal to hire a transgender individual and prohibited practices under the *Charter of the French Language*.

We also identify key issues and cases to monitor in 2025, providing insights into developments that may impact employers and employees alike.

For additional information or to discuss any of the cases in detail, please reach out to a member of our Employment and Labour law group.

1. *Golf des Quatre Domaines inc. v Bélanger*, 2024 QCCA 620

Constructive dismissal and the distinction between fixed-term and open-ended contracts

Facts

- The employee began working for the employer in 1999, initially in an assistant position. Over time, she advanced within the organization and was promoted to General Manager in January 2018.
- In March 2018, the parties signed a first written employment contract, which allowed either party to unilaterally terminate the agreement, provided a specific notice period was given. The contract also stipulated that if the employee was dismissed as General Manager, she could return to her prior role as assistant under the conditions applicable to that position.
- In May 2018, an addendum to the employment contract was signed. It included the following provision : "This is to confirm that a lump sum of CA$10,000.00 will be paid to the employee for the first payable in December of each year for a five-year contract from this day, i.e. for the years 2018 to 2022 inclusive. In the event of voluntary departure or dismissal, the amount for the current year will be paid and the amounts for subsequent years will be cancelled." [translated by authors].
- In November 2018, the employer terminated the contract and invited the employee to return to her previous role.
- In November 2019, the employee filed a claim for constructive dismissal, arguing that the parties were bound by a five-year fixed-term contract and that the employer owed her salary for the remaining years of the agreement.
- The Superior Court concluded that the parties were, by a fixed term agreement, referencing the “five-year contract” expression used in the 2018 addendum. Ruling that the employee had been constructively dismissed, the Tribunal ordered the employer to compensate her for the unpaid balance of the five-year period, ruling that she had been constructively dismissed.

Decision

- The Court of Appeal upheld the trial judge’s determination that the employee was constructively dismissed. It found that the employer had unilaterally and significantly altered her employment terms without valid cause or appropriate notice when it demoted her.
- However, the Court of Appeal identified a manifest error in the trial judge’s reasoning regarding the contract’s classification. Specifically, the Court noted that the March 2018 agreement contained unilateral and discretionary termination rights for both parties, a hallmark of undefined term contracts.

- The Court determined there was nothing in the evidence supporting that the parties were intending to transform the initial indefinite-term contract into a fixed-term one when signing the 2018 addendum. Importantly, the addendum did not alter the unilateral termination provisions of the original contract.

- Constructive dismissal in the context of an undefined-term employment contract entitles the affected employee to compensation in lieu of reasonable notice. In this case, the Court of Appeal set the notice period at 20 months.

Final provisions of the *Act to Modernize the Occupational Health and Safety System* come into force

We would like to remind you that several amendments under the *Act to Modernize the Occupational Health and Safety System*, adopted in October 2021, have not yet taken effect. These amendments will come into force on the date or dates specified by the government, which must be no later than October 6, 2025.

As a result, the current interim arrangements for prevention and participation mechanisms will expire by October 5, 2025. Employers will be required to develop and implement a prevention program that includes psychosocial risks.

2. *Syndicat de l'enseignement de la région de la Mitis v Centre de services scolaire des Monts-et-Marées*, 2024 QCCA 1280

Dismissal for poor performance

Facts

- The employee began working for the appellant employer in 2001 and maintained a clean disciplinary record until her dismissal.
- During the 2015-2016 school year, she chose to teach a multi-grade intercycle class encompassing three grade levels, which proved to be highly challenging. Concerns raised about her performance included disorganization, noncompliance with established guidelines, and the use of sarcasm towards students. Despite the principal's recommendations, she elected to teach the same group the following year, continuing to encounter difficulties. Additional criticisms arose, including non-compliance with ministerial guidelines, lack of professionalism, bullying of certain students and personal use of social media during class.
- On February 22, 2017, she was suspended with pay pending an investigation into these issues and was subsequently dismissed for "insubordination and/or misconduct and/or neglect of duty and/or incapacity."
- The union filed a grievance contesting the dismissal.
- The arbitrator categorized the dismissal as administrative and upheld the termination, concluding that the employer had satisfied the criteria established in *Costco Wholesale Canada Ltd. v Laplante* (Costco).
- The Superior Court dismissed the union's application for judicial review, finding no reviewable error in the arbitrator's categorization of the dismissal as administrative or in the contextual application of the Costco criteria.

Decision

- The Court of Appeal rejected the union's argument that the arbitrator unreasonably characterized the dismissal as administrative rather than mixed (both administrative and disciplinary).
- While some of the employee's shortcomings might initially have been viewed as disciplinary in nature, her responses during the investigation led the employer to determine that she appeared unable to recognize her deficiencies and challenges, which pointed more to a performance issue. As a result, even with continued support, it was unlikely that her practices would have significantly improved. Given this context and the grounds for dismissal cited, the arbitrator could reasonably conclude that the case involved administrative incapacity rather than intentional misconduct.
- The Court also dismissed the union's assertion that the dismissal was unreasonable on the basis that the employer had not explicitly warned the employee that her job was at risk if her performance did not improve. The arbitrator's reliance on the Costco criteria as a framework to be applied globally and contextually, rather than as strict conditions, aligns with a minority trend in case law and was not unreasonable.

3. *4036409 Canada inc. v Commission des normes, de l'équité, de la santé et de la sécurité du travail*, 2024 QCCA 1250

Staggering of hours of work and computing hours of work and overtime pay

Facts	• The employer provides manpower to a paper mill operating 24/7. Employees worked a schedule staggered over two weeks (36hours one week, 48hours the other), each shift being 12 hours, including a 60-minute paid meal break. • All working hours were compensated at regular rate. • An anonymous monetary complaint was filed with the Commission des normes, de l'équité, de la santé et de la sécurité au travail (CNESST), alleging that the employer was not paying overtime in accordance with the *Act respecting labour standards*. • At the trial-court level, the Superior Court ruled in favour of the employees, concluding that: o The employer could not rely on staggered working hours without prior authorization from the CNESST. o Paid meal breaks had to be included in the calculation of hours worked for overtime purposes. o The workweek, for overtime calculations, began on Monday.
Decision	• Staggered hours: The Court of Appeal upheld the finding that the employer could not benefit from staggered hours, as it had not secured prior authorization from the CNESST. Furthermore, individual agreements under the third paragraph of section 53 cannot be applied retroactively, which was the case here. • Paid meal breaks: The Court of Appeal overturned the trial judge's decision regarding the inclusion of paid meal breaks in the calculation of hours worked for overtime. It noted that employees were not required to work during their breaks, except in the event of an emergency. Although employees were encouraged to remain on-site due to the short duration of the breaks and the plant's layout, they were not obligated to eat at their workstations and generally took their meals in the cafeteria. • Workweek: The Court also overturned the trial judge's conclusion about the obligation to have the workweek starting on Monday. Even though punch cards reflected a Monday-to-Sunday workweek, the employer could adopt a different seven-day period (e.g., Saturday to Sunday) for calculating overtime hours.

4. *Ouellet v Tribunal administratif du travail*, 2024 QCCS 621 (application for leave to appeal granted)

Reassignment of a pregnant worker

Facts

- On December 20, 2020, the worker, a patrol sergeant for the Service de police de la Ville de Québec, submitted a medical certificate confirming her pregnancy and indicating the risks associated with her job for both her and her unborn child. On the same day, the employer removed her from work without offering her an alternative reassignment.
- On January 8, 2021, the worker formally requested reassignment to safe tasks.
- On February 10, 2021, after analysis, the employer refused the reassignment. On the same day, the worker filed a complaint with the CNESST under section 227 of the *Act respecting occupational health and safety* (AOHS), alleging reprisals and discrimination due to her pregnancy.
- On April 29, 2022, the CNESST dismissed the complaint, ruling that no sanctions or measures had been imposed on the worker.
- On December 16, 2022, the Administrative Labour Tribunal (ALT) upheld the CNESST's decision, asserting that reassignment was not a right guaranteed under sections 40 and 41 of the AOHS.
- On January 12, 2023, the worker filed for judicial review of the ALT's decision, arguing that the Tribunal had erred in adopting an overly restrictive interpretation of sections 40 and 41 of the OHSA and had failed to consider the Supreme Court of Canada's interpretation in Dionne v Commission scolaire des Patriotes.
- The worker maintained that the employer had a duty to assess whether a safe and available position existed, and if such a position was found, to reassign her during her pregnancy.
- The employer, in contrast, argued that there was no legal obligation to reassign the worker to another position.

Decision

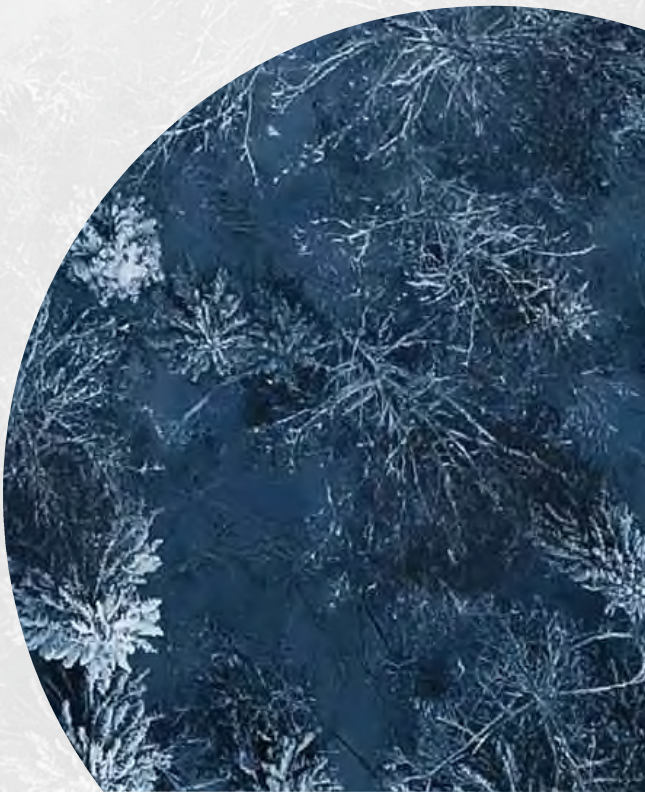
- The Superior Court found the ALT's decision unreasonable for the following reasons:
    - The ALT had adopted an overly restrictive interpretation of the right to reassignment, neglecting the employer's obligation to respond to reassignment requests. It also failed to consider important aspects of the Dionne decision, which established that after a reassignment request, the employer must assess whether reassignment is possible.
    - The ALT did not properly analyze the reasons behind the employer's refusal to reassign the worker, which prevented a determination of whether this refusal could be considered discriminatory. This omission impacted the reasonableness of the ALT's decision.

- The Court also felt the ALT failed to address the worker's main arguments regarding the employer's duty and that the worker's complaint under section 227 should be assessed in light of her rights under sections 40 and 41 of the AOHS.

- The Court granted the appeal for judicial review and returned the case to the ALT for a new analysis in accordance with the AOHS.

To watch for in 2025

The City of Québec has appealed this decision and the Court of Appeal's ruling will provide clarification regarding the employer's obligations.



5. *Alliance de la Fonction publique du Canada (AFPC) v Association des femmes autochtones du Canada*, 2024 QCTAT 2520

Inclusion in a bargaining unit of people who telework from outside Québec

Facts

- The employer operates as a not-for-profit organization, conducting activities in facilities located in Gatineau and Chelsea and providing various online services to clients across Canada.
- The Public Service Alliance of Canada (PSAC) filed a certification application to represent all of the employer's employees.
- The application sought to represent 31 employees working either in-person at the employer's facilities in Québec or by telecommuting from within Québec. It also sought to represent 51 employees who, for the most part, work remotely from outside Québec. Aside from occasional business trips, these 51 employees carry out all of their work remotely. The employer argued that these 51 out-of-province employees cannot be certified under the Québec Labour Code, asserting that doing so would extend the Code's jurisdiction beyond its constitutional limits.
- The union, however, contended that all of the employer's employees, regardless of their location, should be certified under the Québec Labour Code, given the real and substantial link to Québec.
- The Court had to determine whether employees who telework outside Québec can be classified as "employees" under the Labour Code and whether such an interpretation would respect the constitutional limits of Québec's legislative powers.

Decision

- The Court points out that the certification is issued for an undertaking and therefore it is the undertaking that must be located in the province of Québec.
- The location where employees perform their work is not a characteristic of the undertaking. Therefore, employees who telework from outside Québec can still be considered as "employees" within the meaning of the Québec Labour Code.
- All material elements related to the employer are located in Québec:
    - The employer's head office and other facilities are located in Québec.
    - The company's goals, mission and operations are directed from Québec.
    - The vast majority of the company's executives work from the head office in Québec.
    - The work performed by employees, although performed outside the province of Québec, is remitted and delivered to the company located in Québec.
- Since all material elements related to the employer are based in Québec and there is no requirement for employees to work from a specific location, the territorial criterion of the place of performance of the work is not relevant in this case.
- These factors demonstrate a real and substantial connection between employees working outside Québec and the Québec Labour Code, ensuring that the Court's interpretation remains consistent with constitutional boundaries.

- The Tribunal concluded that the employees working in Québec and those working outside Québec were covered by the bargaining unit agreed upon by the parties and referred the matter back to the labour relations officer to complete the investigation into the representativeness of the applicant association.

Unionization of first-level managers

On April 19, 2024, the Supreme Court of Canada delivered a long-awaited ruling affirming that the Labour Code's restriction on union certification for first-level management associations is not unconstitutional. For further details, read the article we published in May 2024, here.

6. *Vaes v Service d'administration PCR ltée*, 2024 QCCS 3967

Damages arising from dismissal without cause

Facts

- After three years of service, the employee was promoted to take on the task of turning around a struggling division. At the time, he was on the brink of resigning from his job as he had received an offer from another employer for an a higher-paying position more aligned with his core expertise. However, feeling flattered by his current employer's confidence in him, he chose to accept the promotion and decline the other employer's offer.
- Just three days into his new role, his superior told him that he had made a mistake in appointing him and asked him to leave without asking questions.
- Following this, the employee was demoted back to his former position, where he was given no meaningful responsibilities. He was later laid off during the COVID-19 pandemic and ultimately dismissed without explanation.
- The employer offered the employee an indemnity in lieu of notice equivalent to eight weeks' salary. He refused it and initiated legal action, claiming:
    - Compensation equivalent to one year's salary.
    - CA$25,000 for moral damages resulting from the degrading treatment associated with his dismissal.
    - CA$120,000 to compensate for the lost job offer he had declined due to the employer's promises.
- In its defence, the employer claimed for the first time that the dismissal was due to serious grounds related to the employee's inability to cooperate. However, no witnesses substantiated these claims during the trial.

Decision

- The Court ruled that the employer failed to prove that there were serious grounds for the dismissal and that the absence of notice was justified. The evidence presented by the employer largely consisted of hearsay and lacked solid corroboration.
- As a result, the Court determined that the employee was entitled to compensation in lieu of reasonable notice, which it established at three months' salary.
- The Court also found that the employer had abused its rights by mistreating the employee before, during and after the dismissal (through humiliation, lack of transparency and unjustified delays). As a result, the Court awarded the employee an additional CA$25,000 for injury to his dignity, honour and psychological safety.
- Finally, the employee successfully demonstrated that he had declined a serious job offer from another employer, as he had been misled by his current employer's promises of a promotion, which were then abruptly rescinded. The Court awarded the employee CA$110,000 for the loss of the opportunity, factoring in potential future income he may have earned from the alternative position.

An *Act to Reduce the Administrative Burden on Physicians* (Bill No. 68)

On October 9, 2024, Bill 68, An *Act to Reduce the Administrative Burden on Physicians* (the Act), received Royal Assent and several of its provisions came into force on January 1, 2025. The Act aims to alleviate the administrative workload for physicians, notably through amendments to the *Act respecting labour standards* (the ALS), thereby modifying the rights of Québec employers regarding the management of employee absence files.

As of January 1, 2025, employers are prohibited from requiring an employee to provide supporting documentation (such as a medical certificate or any other relevant document) for the first three periods of absence due to illness, organ or tissue donation, accidents, domestic violence, sexual violence or a criminal act, provided each absence lasts three consecutive days or fewer within a 12-month period. Employers are consequently allowed to request such documentation starting on the fourth day of one of the first three absences or on the first day of the fourth or following absence period, should they deem it necessary to verify the employee's absence.

Additionally, for absences related to family or parental reasons, as of the same date, employers can no longer require a medical certificate to justify any of the ten annual absence days specified in section 79.7 of the ALS. However, employers may still request other forms of supporting documentation when appropriate.

We recommend that employers review their absenteeism policies and collective agreements to ensure they comply with the amended provisions.

Finally, we wish to draw your attention to the fact that this Act also modifies certain rights and obligations related to the administration of benefit plans, including non-insured plans. We invite you to consult a member of our team if you administer an uninsured plan and would like to know more in this regard.

7. *Poulin v Hydro-Québec*, 2024 QCCS 280 (Statement of Appeal Filed)

Constructive dismissal and obligation to mitigate damages

Facts	• The employee had worked for the employer for approximately 25 years, including eight years as an executive and two years as a vice-president. • From August 2019 to June 2020, he was assigned to a special project tied to a highly strategic mandate. During this period, his position was temporarily filled by one of his subordinates, whose candidacy he had recommended. However, towards the end of his special mandate, the employee was informed that all vice-president positions would be replaced by senior director roles and his substitute would retain the senior director position. The employee, on the other hand, was offered a new role that he described as purely operational, lacking any strategic responsibilities. • There were no changes, however, to his salary or other working conditions. • When the employee refused to accept the new position, the employer informed him that if he continued to refuse, it would be considered as a resignation. • The employee filed a legal claim, arguing that the imposition of the new position amounted to constructive dismissal and that he was entitled to compensation equivalent to two years' salary.
Decision	• The Court ruled that transferring the employee to a new position after completing the strategic mandate constituted constructive dismissal. The change represented a substantial and unilateral alteration of his strategic duties, which were a key element of his contract. • Maintaining his salary and benefits was not sufficient to compensate for the loss of these strategic responsibilities. • The employee was thus entitled to compensation in lieu of notice, with the amount to be determined by taking into consideration his duty to mitigate his damages. • The Court found that the employee had failed to meet his obligation to mitigate his damages by refusing to accept the new position offered by the employer. A reasonable person in similar circumstances would have accepted the new position to minimize damages during the notice period, especially considering the context of the COVID-19 pandemic. • While the tasks involved in the new position were different, the working conditions were largely the same and not degrading. The transfer occurred as part of a reorganization and was not directed at the employee personally. • As a result, the employee's claim was rejected.

8. *Commission des droits de la personne et des droits de la jeunesse (E.B.) v 9302-6573 Québec inc. (Bar Lucky 7)*, 2024 QCTDP 9

Discriminatory refusal to hire (trans person)

Facts	• A trans woman applied for a server position at a bar and was invited for a trial run. • After her trial was deemed satisfactory, the manager asked her whether she was trans. • Upon receiving an affirmative answer, the manager refused to hire her, citing concerns about her safety and the potential reaction of customers, which he described as "old-fashioned." • The plaintiff filed a complaint with the Commission des droits de la personne et des droits de la jeunesse (CDPDJ, the Québec Human Rights Commission), alleging that the refusal to hire her was discriminatory.
Decision	• The phrase "gender identity or expression" in section 10 of the Québec *Charter of Human Rights and Freedoms* (the Charter) encompasses being a trans person. • The evidence indicated that the refusal to hire the plaintiff was directly linked to her gender identity, thus violating section 10 of the Charter. • Although it is true that trans women may face higher risks of violence, the employer's stated reasons—concerns about the plaintiff's safety and customer reaction—were speculative in nature. • In any event, customer preferences or prejudices cannot justify discriminatory behaviour by an employer. • Under occupational health and safety legislation, employers are legally obligated to ensure the safety of their employees, irrespective of potential customer biases. • The complaint was upheld and both the employer and the manager were ordered to pay moral (CA$10,000 jointly and severally) and punitive (CA$2,000 each) damages to the plaintiff.

9. *Kim v Ultium Cam*, 2024 QCTAT 3295

Contesting a refusal to hire under the Charter of the French Language

Facts

- The plaintiff applied for a position with the employer after seeing a job advertisement written in Korean in a newspaper targeted at the Korean community.
- The employer required the submission of a CV in English, as well as proficiency in both English and Korean. The employer justified this request by explaining that some employees did not understand French and that knowledge of these languages was necessary due to the company's "international needs."
- After being informed that he had not been selected for the position, the plaintiff filed a complaint for prohibited practice under the *Charter of the French Language* (CFL), alleging that the employer had committed a prohibited practice by requiring knowledge of English as a condition of employment.

Decision

- Article 46 of the CLF prohibits requiring proficiency in a language other than French as a condition for employment, unless such requirement is necessary for performing the work and reasonable steps have been taken to avoid it.
- According to article 46.1 of the CLF, if the employer has not assessed the real language needs of the tasks involved, ensured that existing language skills among other staff are insufficient for these tasks and taken reasonable steps to limit the positions requiring knowledge of a language other than French, the employer is considered not to have made reasonable efforts to avoid the language requirement.
- In this case, the plaintiff meets the conditions for benefiting from the legal presumption of prohibited practice, as:
    - He applied after seeing the job offer.
    - The employer required knowledge of languages other than French as a condition for employment.
    - The complaint was filed within the required timeframe.
- The employer cannot rebut this presumption because:
    - The justifications provided (need for Korean/English) were not documented in the job offer;
    - The employer failed to demonstrate that it had taken reasonable steps to avoid these language requirements, particularly by not verifying if existing language skills (English/Korean) were adequate for the tasks requiring those languages.
- Failure to comply with the conditions in article 46.1 of the CFL taints the hiring process.
- Once the presumption is established, it can only be rebutted with evidence of linguistic necessity and reasonable prior efforts to limit language requirements.

- The CFL does not allow any other justification to counter the presumption of prohibited practice. Thus, the employer's attempt to argue that the plaintiff was not hired for reasons unrelated to language proficiency is not sufficient.
- As a result, the complaint was upheld and the Tribunal reserved its powers to determine the appropriate remedies.

Francization of companies

Starting June 1, 2025, Québec companies with between 25 and 49 employees will be subject to the francization process outlined in the *Charter of the French Language*. This process mandates that companies ensure French is widely used within their organization, including as the language of work, communication and service. Companies will need to assess their linguistic situation and, if necessary, implement a francization program.

10. *Syndicat du personnel enseignant du campus de Saint-Lawrence v Cégep Champlain-St. Lawrence*, 2024 QCTA 180

Appeal for judicial review

Facts	• The employee, a teacher with 35 years of service, worked at the college and also served as a teacher representative on the school board. • In January 2022, in a difficult organizational context, the employee was informed that a complaint had been filed against her for psychological harassment and mobbing by the management committee. An external firm was tasked with conducting the investigation, which lasted 11 months. The investigation concluded that the employee had not engaged in any psychological harassment. • During and after the investigation, the union filed three grievances (i) alleging that the employer had failed to provide a harassment-free workplace, (ii) asserting that the harassment investigation was an abuse of rights, and (iii) challenging the process and timelines of the investigation. The grievances argued that the allegations prompting the investigation were largely related to administrative disagreements dating back as far as 2015, rather than actual harassment and that many of the issues were either time-barred or insufficiently documented. Additionally, the grievances criticized the employer for the prolonged investigation, the lack of transparency from both the employer and the external firm, failure to comply with internal policies and the imposition and continuation of an oppressive communication protocol that unduly restricted the employee's rights. • The employer defended its actions by asserting that the investigation was justified, that it had no control over the process since it was outsourced to an external firm and that any delays were partly due to the plaintiff's behaviour. The employer also described the plaintiff as paranoid and claimed that a reasonable person would not consider themselves harassed. However, it acknowledged some delay in lifting the communication protocol.
Decision	• The arbitrator found it perplexing that an investigation was initiated and progressed beyond the admissibility stage when no specific allegations had been made against the employee. This was considered to be seriously vexatious behaviour on the part of the employer. • The arbitrator emphasized that, even when an external firm conducts the investigation, the employer remains responsible for ensuring the process respects the rights of all parties involved, including those accused of harassment. • The arbitrator also concluded that the allegations against the employee were vague, outdated and baseless. In some cases, the actions attributed to her fell under her rights to freedom of opinion and expression as a member of board. Mere disagreement with others' opinions does not justify initiating a harassment investigation.

- The failure to inform the employee of the allegations against her two months into the investigation violated established case law and the employer's internal policies.
- The investigation process was further undermined by the external firm cancelling multiple scheduled meetings with the plaintiff and refusing to provide transparency regarding the admissibility analysis or the identities of the accusers, thus contributing to the abusive nature of the investigation.
- The employer was found to have acted in a harassing and abusive manner toward the plaintiff and all three grievances were upheld.

Psychological harassment and sexual violence

To learn more about the *Act to Prevent and Combat Psychological Harassment and Sexual Violence in the Workplace*, enacted in March 2024, you can read the summary of our webinar on the topic or explore the blog post we published in December 2023.

11. *Demers et Air Canada*, 2024 QCTAT 2686

Complaint under section 32 of the AIAOD

Facts

- In April 2019, an employee of Air Canada suffered an occupational injury. A dispute arose regarding the income replacement indemnity (IRI) he was entitled to receive.
- Following the disagreement, the worker filed a complaint under section 32 of the *Act respecting industrial accidents and occupational diseases* (AIAOD), claiming he had not received IRI for the first 14 full days, specifically for April 30, 2019.
- The CNESST mediator-decision-maker deemed the complaint inadmissible, citing the constitutional inapplicability of section 32 of the AIAOD to Air Canada, a federally regulated company. This decision was upheld by the ALT but later overturned on judicial review, with the Superior Court referring the case to the ALT for further consideration of both the admissibility and merits of the complaint.
- At the ALT, the worker, PGQ and CNESST argued that the worker had not received the full IRI to which he was entitled under section 60 of the LATMP and that filing a complaint under section 32 was the appropriate course of action in this case.
- The employer, however, maintained that section 32 does not apply to federally regulated companies and, alternatively argued that the worker had not been subjected to a sanction under section 32. The employer contended that the worker had received compensation, pointing out that the shift in question was not personally assigned to the worker and that he had been compensated with 100% of his net salary for other shifts within the 14-day period.
- The issues in dispute were:
    - Did the employer pay the worker the IRI to which he was entitled under section 60 of the AIAOD?
    - Is section 32 of the AIAOD the appropriate procedural vehicle for the worker to obtain the IRI provided under section 60?

Decision

- The Court emphasized that the IRI should be calculated for each day the worker would have normally worked but for the injury. Although the April 30 shift was not part of the worker's regular schedule, evidence showed that the worker had agreed to take the shift in an exchange with another employee prior to the injury. Therefore, the Court ruled that the worker was entitled to compensation for that day.
- The Court rejected the employer's argument that the worker had already received an equivalent sum due to a bonification. It clarified that the IRI under section 60 is distinct from benefits or bonuses and only the statutory indemnity is relevant in this context.

- On the admissibility of the complaint, the Tribunal affirmed its jurisdiction to ensure the worker received the proper compensation, even though the employer is federally regulated. The Tribunal noted that this issue was not related to labour relations but to the enforcement of the law.
- The Tribunal also reiterated that filing a complaint under section 32 is the proper remedy for obtaining compensation under section 60.
- Ultimately, the Tribunal granted the worker's request, ruling that he had not received the IRI he was entitled to for April 30, 2019.

To watch for in 2025

This decision challenges the doctrine of jurisdictional exclusivity, which has traditionally prevented the application of section 32 of the AIAOD to federally regulated companies. Air Canada has filed for judicial review and it will be interesting to see how the Superior Court rules on this matter.

12. *Piché v Entreprises Y. Bouchard & Fils inc.*, 2024 QCCA 1374

COVID-19 – Preventive withdrawal under section 32 of the AOHS

Facts	• The worker, a paramedic technician, was removed from his duties during the COVID-19 outbreak due to his use of immunomodulating medication. He subsequently filed a claim for preventive withdrawal under section 32 of the *Act respecting occupational health and safety* (AOHS) with the CNESST. • The CNESST rejected the claim, stating that there were no signs of deterioration in the worker's health. This decision was upheld by the administrative review division. • On May 21, 2021, the Administrative Labour Tribunal (ALT) also rejected the worker's contestation, ruling that COVID-19 did not constitute a contaminant under the AOHS and concluding, based on updated evidence, that there was no danger to the worker's health. The ALT did not address the final criterion of health impairment, as the first two conditions of section 32 of the OHSA were not met. • On June 7, 2023, the Superior Court upheld the ALT's decision, finding that the analysis conducted was reasonable. • The worker is appealing this decision.
Decision	• The Court of Appeal found that the trial judge had erred in applying the reasonableness standard of review and concluded that the ALT's decision was unreasonable. • Regarding the definition of "contaminant," the Court determined that the ALT had erroneously confined its reasoning to the 2015 legislative amendment, which stipulates that a material must be generated by dangerous equipment or substances to be considered a contaminant. The Court held that the ALT failed to interpret the amendment within the broader context of the AOHS, which must be applied liberally to ensure worker safety and avoid forcing workers to choose between their health and their employment. The Court further argued that this error led the ALT to an incorrect conclusion about the applicability of the law to viruses like COVID-19. • Concerning the issue of danger, the Court ruled that the ALT had incorrectly based its analysis on updated evidence that was not available at the time of the initial decision. According to the Court, the danger assessment should have been made based on the information available at the time of the preventive withdrawal decision. New data could only be used to update the decision if the withdrawal was still in effect. After reviewing the evidence, the Court concluded that there was no doubt about the presence of danger at the time of the worker's withdrawal. • Given the ALT's failure to address the criterion of health impairment, the Court deemed it reasonable not to examine this issue, considering its findings on the contaminant and danger criteria. • The Court allowed the appeal and returned the case back to the ALT for a decision regarding the health impairment criterion.

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National perspective

We invite you to explore our national team's newly published guide, which provides an in-depth analysis of the latest legal developments in labour and employment law across Ontario, Québec, Alberta, and British Columbia.

2024 in Review and Future Trends

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