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

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## 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 (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. 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”).

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”) 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 worked.

The CNT recently announced that it received 23,880 complaints of psychological harassment between June 1, 2004 and March 31, 2014, 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 2014-2015.

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 quadrupled.

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 them.

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. 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 rates. An organization’s absenteeism rate is critical for its financial health, given that the resulting cost can be as much as 17% of total payroll. 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 year\(^{14}\).

"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 employee\(^{15}\).

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 case\(^{16}\). 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 adjudicators\(^{18}\). 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 sufficient\(^{19}\).

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 unpleasantness\(^{20}\). Thus, for example, an employer may legitimately:

- insist that an employee improve conduct that is substandard or does not comply with workplace rules and policies\(^{21}\);
- directly require an employee to perform his or her work in accordance with a specific method\(^{22}\);
- make administrative decisions affecting a group of employees for reasons of organizational management\(^{23}\);
• 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 excessive or unreasonable or discriminatory. In addition, the case law holds that perfection cannot be demanded in the workplace and recognizes that employers are entitled to make mistakes.

Raising one’s voice, being impolite or in a foul mood does not constitute psychological harassment where they occur in isolation.

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” 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 derision 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.”

Some adjudicators consider medical evidence useful or even necessary to prove that the employee’s dignity or psychological or physical integrity has been so affected.

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 victim. 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.” 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 them.

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.

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 personnel, and decreed that the LSA’s provisions on psychological harassment are an integral part of every collective agreement.

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 harassment, 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 value.

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 it. It should be noted that this is an obligation of means and not of result. This obligation is additional to those under the Charter of Human Rights and Freedoms and the Civil Code of Québec, 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 harassment.

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

April 2017

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psychological harassment. 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 of.

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 in;
- implementing measures for rescuing the victim from isolation and integrating him or her into other employee groups.

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 fault.

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 harasser or by transferring the complainant to a different branch.

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 transparently.

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 individual. 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 complainant.

An investigator may face a liability suit if any deficiencies are found with the investigation. In the case of Ditomene v. Boulanger, 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 mishandled.

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
Psychological harassment, boon or bane: how to interact with the CNESST?
April 2017

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 measures.

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 harasser.

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 inquiry. 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
Psychological harassment, boon or bane: how to interact with the CNESST?
April 2017

framing the issues, and requests for further particulars are generally not granted\textsuperscript{66}. Before arbitral tribunals, a chronological account of the actions complained of and the identification of the persons involved\textsuperscript{67} or a list in chronological order of the impugned actions\textsuperscript{68} have been ordered.

An application to have the complaint dismissed will be granted by both the ALT\textsuperscript{69} and arbitral tribunals\textsuperscript{70} 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 instances\textsuperscript{71}.

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:

\begin{itemize}
  \item reinstatement of the victimized employee;
  \item taking action to put a stop to the harassment;
  \item paying the employee an indemnity for lost wages or loss of employment, or as punitive or moral damages;
  \item paying for psychological support required by the employee;
  \item modifying the employee’s disciplinary record.
\end{itemize}

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:

\begin{itemize}
  \item provide the victim of the harassment with a letter acknowledging the employer’s mistake and reiterating its confidence in the employee’s integrity\textsuperscript{72};
  \item conduct a further investigation\textsuperscript{73};
  \item provide sensitization and training activities on psychological harassment issues within eight months, failing which $20,000 in punitive damages will be assessed\textsuperscript{74};
  \item reimbursement of the expenses entailed by holding the hearings (including simultaneous interpretation, travel, meals and lodging costs)\textsuperscript{75}.
\end{itemize}

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Notes

1 CQLR, c. N-1.1
2 January 1, 2006, AZ-50350462
3 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 (IRSSST) (http://www.issst.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/harcerelement-40-des-plaintes-rejetees/569902)
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 (http://www.cnesst.gouv.qc.ca/fileadmin/fichiers/Documents/normes_travail/harcelement_psychologique/Stratprevharcelement.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).
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.cgssst.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 complete 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)
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-132 (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 500-17-06469-118).
24 Rio Tinto Alcan, usine Alma v. Morency, D.T.E. 2014 QCCS 4601, at para. 81 (granting the motion for judicial review and dismissing the grievance allowed by the arbitrator)
30 Nadler Danino, at para. 90.
34 Sobeys, supra note 30 at paras. 214 and 216
36 Section 3 (6) LSA
37 Section 81.20 LSA
38 Section 123.7 LSA
40 Section 81.19 LSA
41 Río 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)

Section 46

In this regard see Alliance des professeures et professeurs de Montréal v. Commission scolaire de Montréal, 2014EXPT-1178 (T.A.) (Paul Charlebois, arbitrateur), at para. 123.
42 Gougeon v. Cheminées Sécurité International ltée, 2010 QCCRT 0120 (Arlette Berger, administrative judge), at para. 105
43 Verreault v. ArcelorMittal Canada inc., 2014 QCCRT 0009, at para. 194
44 Carrié v. Mitall Canada inc., 2009 QCCRT 0533 (Mario Chaumont, administrative judge), at paras. 238-241.
45 Mercier v. Sherbrooke (ville de), 2015 QCCRT 0415 (Pierre Flageole, administrative judge)
47 Goulet v. Coopérative de services à domicile Beaure-Nord, 2012 QCCRT 0590 (Myriam Bédard, administrative judge), at paras. 71 et seq.: example of irreproachable conduct on the part of an employer informed of a problematic situation.
50 Syndicat des agents de la paix en services correctionnels du Québec v. Ministère de la sécurité publique, 2013 CanLII 23485 (T.A.) (Yvan Brodeur, arbitrateur)
51 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, arbitrateur)
52 Gendron v. Agence de revenu du Québec, 2015 QCCRT 0095 (Myriam Bédard, administrative judge), at para. 136
53 Roberval 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.
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, arbitrateur)
61 Boudreault v. D. Bertrand & Fils Inc., 2007 CanLII 4596 (T.A.) (Carol Girard, arbitrateur)
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, arbitrateur) 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, arbitrateur)
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, commissioneer), at paras. 48 et seq.
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, commissioneer)
72 Alliance des professionnelles et professionnelles de la Ville de Montréal v. Ville de Montréal, D.T.E. 2009T-72 (T.A.) (Fernand Morin, arbitrateur)
75 Orantes Silva et al. v. 9009-1729 Québec inc., 2016 QCTAT 2155 (André St-Georges, administrative judge), at para. 159