

Case In Point

Federal Court of Appeal Clarifies Employer Obligations to Investigate Workplace Violence Allegations under the Canada Labour Code

Date: December 9, 2015

In a recent decision, [Canada \(Attorney General\) v. Public Service Alliance of Canada](#), the Federal Court of Appeal upheld a decision of the Federal Court which clarified an employer's obligation to appoint an impartial "competent person" to investigate complaints of workplace violence.

The *Canada Occupational Health and Safety Regulations* ("Regulations") require an employer to appoint a "competent person" who is impartial and seen by the parties to be impartial to investigate workplace violence "if an employer becomes aware of workplace violence" and is unable to resolve the matter with the employee. At issue in this case was when that obligation is triggered for a complaint which, even if true, may not amount to workplace violence.

The employee in this case had filed a complaint of harassment with his employer, the Canadian Food Inspection Agency ("CFIA"). The employer appointed a management employee to undertake a "fact-finding" process to review the concerns raised by the employee and determine whether an investigation was warranted. After interviewing those involved, the individual concluded that an investigation was not required because the allegations did not constitute harassment. The employee alleged that this process amounted to an investigation in and of itself and an impartial, competent person had not been selected within the meaning of the *Regulations*. The CFIA took the position it had not been made "aware of workplace violence" so as to trigger the requirement to appoint a competent person because the alleged conduct could not reasonably be expected to cause harm, injury or illness, and the "fact-finding" process was its way of determining whether the requirement was triggered. This issue ultimately came before the Federal Court of Appeal.

The Federal Court of Appeal agreed with the Federal Court, which had found that "if the attempts at informal resolution were unsuccessful and it was not 'plain and obvious' that the complaint was not related to workplace violence, there was a mandatory duty to appoint a competent person that was seen by both parties as being impartial." The Federal Court also found that harassment of the kind alleged in this case may constitute workplace violence, because it may cause mental or psychological harm or illness. As stated by the Federal Court of Appeal:

[31] [...] allowing the employers to conduct their own investigations into complaints of workplace violence and to reach their own determination as to whether such complaints deserve to be investigated by a competent person would make a mockery of the regulatory scheme and effectively nullify the employees' right to an impartial investigation of their complaints [...].

That being said, the Court was careful to note that it is not the intent of the *Regulations* to require employers to appoint a competent person to investigate each and every complaint that is characterized by an employee as being workplace violence. Employers can still review a complaint with a view to determining whether, on its face, it falls within the definition of workplace violence.

This decision limits an employer's ability to "screen out" complaints it considers to be unrelated to workplace violence before commencing the often costly and lengthy process of appointing a competent person to investigate the complaint. It is only where it is "plain and obvious" that the complaint is not related to workplace violence that an employer can justify not completing this step.

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©