

**IN THE SUPREME COURT OF CANADA
(APPEAL FROM THE ONTARIO COURT OF APPEAL)**

B E T W E E N:

**HONDA CANADA INC. operating as
HONDA OF CANADA MFG.**

APPELLANT
(Respondent on Cross Appeal)

- and -

KEVIN KEAYS

RESPONDENT
(Appellant on Cross Appeal)

- and -

**ONTARIO HUMAN RIGHTS COMMISSION,
COUNCIL OF CANADIANS WITH DISABILITIES,
HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO,
ONTARIO NETWORK OF INJURED WORKERS' GROUPS,
CANADIAN HUMAN RIGHTS COMMISSION,
MANITOBA HUMAN RIGHTS COMMISSION,
NATIONAL ME/FM ACTION NETWORK AND
ALLIANCE OF MANUFACTURERS & EXPORTERS CANADA**

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PART I - OVERVIEW OF LEAF'S POSITION

1. The Intervener, the Women's Legal Education and Action Fund (LEAF), accepts the statement of facts of the Respondent/Cross-Appellant Keays.
2. LEAF advances two main propositions in its argument:
 - a. In order to provide access to justice, the common law should incorporate human rights obligations into the law of employment contracts and the law of damages, in accordance with the Charter value of equality.
 - b. The comparator group analysis for both human rights and section 15 purposes must incorporate substantive equality.

PART II- LEAF'S POSITIONS ON THE APPELLANT'S AND CROSS APPELLANT'S QUESTIONS

3. LEAF's two main propositions in its argument are as stated in paragraph 2 above.

PART III- STATEMENT OF ARGUMENT

1. Access to Justice Is Not Served by the Current Legal Framework

4. The availability of effective and meaningful access to the justice system for all members of society is one of the foundational tenets of the rule of law. This case presents an opportunity for the Court to consider the role human rights obligations play in the adjudication of employment matters.

British Columbia Government Employees' Union v. British Columbia (Attorney General), [1988] 2 S.C.R. 214 at paras. 24-26.

LEAF's Book of Authorities at Tab 2.

5. Although the plaintiff is a man with a disability, the implications of this case affect all equality seeking groups. For women, work is the locus for significant forms of discrimination which they in particular experience, such as sexual harassment, inequitable pay and promotional practices, exclusion from work and underemployment. Sexual harassment alone acts as a

significant barrier to women's full participation in the paid workforce. Close to 95% of victims of harassment are women, and over 95% of sexual harassers are men. Sex discrimination violates women's equality rights and often causes loss of employment, career prospects and status. It exacerbates existing and historical social and economic inequalities. Sexual discrimination is an abuse of power and a practice of inequality between the sexes.

Janzen v. Platy, [1989] 1 S.C.R. 1252; See also: Karen Kelly, "Visible Minorities: a Diverse Group" Canadian Social Trends (Statistics Canada) (Summer 1995); Bill Black, *B.C. Human Rights Review: A Report on Human Rights in British Columbia* (Vancouver: Ministry Responsible for Multiculturalism and Human Rights, 1994) at pp.5-10; *Sears Canada Inc. v. Davis Inquest (Coroner of)*, [1997] O.J. No. 1424 (Div. Ct.); Robin West, "Unwelcome Sex: Toward a Harm Based Analysis" in *Directions in Sexual Harassment Law*, Catherine A. MacKinnon and Reva B. Siegal, eds. (New Haven: Yale University Press, 2004) 138 at 142-143; Reva B. Siegal, "A Short History of Sexual Harassment" in *Directions in Sexual Harassment Law*, *supra*, 1 at 10-11.

LEAF's Book of Authorities at Tabs 10, 22, 18, 15, 29, 28.

6. Sex discrimination often takes forms that are different and distinct from other types of discrimination and are therefore experienced differently by women. Further, different categories of women (e.g. racialized or First Nations women, women with disabilities) may experience unique and acute forms of discrimination. Within the general category of women, sex discrimination can take on even more unique forms which reflect the intersection of the identity features of the woman concerned. For example, black women's experiences of sexual harassment by white males can import experiences that resound of slavery and colonization.

Tanya Katerí Hernández, "The Racism of Sexual Harassment" in Catharine A. MacKinnon and Reva Segal, *Directions in Sexual Harassment Law* (Cambridge: Harvard University Press, 2004) at 479; Catharine A. MacKinnon, *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979) at 30.

LEAF's Book of Authorities at Tabs 21 and 23.

7. Since *Bhadauria v. Seneca College* there has been an attempt to draw "water-tight" compartments around employment claims involving human rights, and all other employment claims. The result is to largely exclude discrimination issues from explicit consideration by the courts in a wrongful dismissal trial. The practical consequence of "bifurcation" is that litigants forfeit a complete adjudication of the issues in their case, no matter how meritorious. After over

twenty-five years of experience, it is apparent that this “bifurcating” of employment based human experience into “human rights issues” and “all other legal issues” does not yield accurate, fair, or just results.

[I]t is undesirable for a tribunal to limit itself to some of the law while shutting its eyes to the rest of the law. The law is not so easily compartmentalized that all relevant sources on a given issue can be found in the provisions of a tribunal’s enabling statute. Accordingly, to limit the tribunal’s ability to consider the whole law is to increase the probability that a tribunal will come to a misinformed conclusion. In turn, misinformed conclusions lead to inefficient appeals or, more unfortunately, the denial of justice.

Seneca College of Applied Arts and Technology v. Bhadauria, [1981] 2 S.C.R. 181; *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513, 2006 SCC 14, at para. 26.

LEAF’s Book of Authorities at Tab 16; Keays’ Book of Authorities at Tab 45.

2. Employment Contract Law Should Incorporate Human Rights

a. Contract Analysis Must Facilitate Access to Justice to Promote Substantive Equality

8. The common law should keep pace with our concepts of equality if it is to remain relevant and useful. In this context, a *Charter* values approach is mandated. As McLachlin C.J. has stated, “The common law must reflect the values enshrined in the *Canadian Charter of Rights and Freedoms*.”

Dobson (Litigation Guardian of) v. Dobson, [1999] 2 S.C.R. 753 at para. 84. See also *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at para. 95; *Gosselin v. Quebec*, [2002] 4 S.C.R. 429 at para. 23; *R.W.D.S.U. v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 at 603-604; *R. v. Salituro*, [1991] 3 S.C.R. 654 at 675; *R.W.D.S.U. Local 558 v. Pepsi-Cola Canada Beverages West Ltd.*, [2002] 1 S.C.R. 156 at paras. 20-22; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at paras. 49, 64; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1077-1078; and *Baker v. Canada*, [1999] 2 S.C.R. 817 at para. 53; P. Hughes, “Recognizing Substantive Equality as a Foundational Constitutional Principle” (1999) 22 *Dalhousie L.J.* 5 at 13, 41-42.

Keays’ Book of Authorities at Tabs 18, 26, 41, 39, and 40; LEAF’s Book of Authorities at Tabs 6, 17 and 1.

9. Access to justice requires recognition of human rights obligations as an implied term of an employment contract. This would provide access to civil remedies such as damages for dignitary

harm arising from the breach per se, damages for mental distress and punitive damages. It would allow for an interpretation and application of the issues under review that is consistent with *Charter* values and would advance equality for women and others within the justice system.

b. A Contract Based Solution is Warranted

10. Women experience systemic disadvantage when they are denied access to justice, either when their discrimination claims are erased from common law claims, or through the unavailability of an appropriate award of damages.

Adrian Howe, *The Problem of Privatized Injuries: Feminist Strategies for Litigation*, paper presented at the Feminism and Legal Theory Conference (University of Wisconsin-Madison Law School: July-August 1987); Melanie Randal, "Sex Discrimination, Accountability of Public Authorities and the Public/Private Divide in Tort Law: An Analysis of *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*", (2001) 26 *Queens L.J.* 451.

LEAF's Book of Authorities at Tabs 19 and 26.

11. Human rights have been accorded "quasi-constitutional" status in Canadian law. Contract law should encompass, analyze and remedy issues involving discrimination through the recognition of human rights obligations as an implied term of the employment contract.

Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536 at 546-547.

LEAF's Book of Authorities at Tab 13.

12. Implied terms have long been a feature of the common law of contracts. An employee's right to reasonable notice upon termination, the very basis of a wrongful dismissal action, is a term originally implied by the courts.

Carter v. Bell & Sons Ltd., [1936] O.R. 290 (Ont. CA); *Wallace v. United Grain Growers Ltd. (c.o.b. Public Press)*, [1997] 3 S.C.R. 701 per McLachlin J. at para. 120.

LEAF's Book of Authorities at Tab 5; Keays' Book of Authorities at Tab 49.

13. The unique features of the employment context warrant expanding the range of implied terms. The common law has already recognized that employees ought not be subjected to or engage in sexual harassment. Inclusion of the implied term of non-discrimination would more accurately express the nature of the contract between the parties, taking into account as it does

the power imbalance between an employer and a female employee. It also marks and respects important employee rights in physical and psychological integrity and accurately reflects the social and legal context in which her employment occurs.

Bannister v. General Motors of Canada Ltd. (1998), 40 O.R. (3d) 591 (Ont. C.A.); *Wallace, supra* at para. 90-94.

LEAF's Book of Authorities at Tab 2; Keays' Book of Authorities at Tab 49.

14. This approach would crystallize one aspect of the implied duty of good faith suggested by McLachlin J. in dissent in *Wallace*: discriminatory or harassing conduct cannot be considered to be undertaken in "good faith".

Wallace, supra, per McLachlin J. at para. 135-146.

Keays' Book of Authorities at Tab 49.

15. There is strong precedent for incorporating obligations drawn from human rights statutes into contracts. This Court, in *Parry Sound*, incorporated the substantive rights and obligations of the Ontario *Human Rights Code* into collective agreements for purposes of grievance arbitration. As Iacobucci J. for the majority stated: "...human rights and other employment-related statutes establish a floor beneath which an employer and a union cannot contract." There is no principled justification for restricting this analysis to unionized employees. This implied term should benefit all employees.

Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324, [2003] 2 S.C.R. 157 at para. 28.

Keays' Book of Authorities at Tab 35.

16. Such an approach would also unify the law across the country and in a very basic sense afford equality of access to justice. For example, in Québec, a woman who has been sexually harassed may choose the forum which best suits her specific situation and needs. She may file at the Québec Human Rights Commission, the Commission des normes du travail or she may choose to file a civil complaint before the Superior Court or the Court of Québec. Her civil action can be based on the Québec *Charter of Human Rights and Freedoms* and /or on articles 1457 and 2087 of the *Civil Code of Québec*. These options can provide women with recourse,

choice and control over the handling of their case. Women in other provinces and territories in Canada do not have this level of access to justice.

Labour Standards, An Act Respecting, R.S.Q. c. N.-1.1, ss. 81.18, 81.19, 123.6; *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, ss.10, 10.1; *Civil Code of Quebec*, S.Q. 1991, c. 64, arts. 1457, 2087; Colleen N. Sheppard, "The Promise and Practice of Protecting Human Rights: Reflections on the *Quebec Charter of Human Rights and Freedoms*" in N. Kasirer and R. MacDonald, eds., *Melanges Paul-Andre Crepeau* (Montreal: Yvon Blais, 1997) at 641.

LEAF's Book of Authorities at Tab 27.

c. Damages Analysis

17. Recognizing an implied term of non-discrimination in the employment contract provides the foundation for providing appropriate remedies, resulting in a more coherent analytical structure for the assessment of damages.

i. Dignitary Interest and Mental Distress

18. Discrimination can give rise to so-called intangible or non-pecuniary harms such as the injury to dignity inherent in a breach of the term, as well as consequent mental distress. These two forms of harm are analytically distinct and should be compensated through awards of general damages and damages for mental distress respectively.

19. Wrongful dismissal tainted by discrimination goes to the core of an employee's identity and self-respect. It offends her dignity. General damages can be awarded in order to compensate the complainant for the intrinsic value of the infringement of rights, and to recognize the right to be free from discrimination and the experience of victimization. It is compensation for injury to dignity and self-respect *per se*.

Ontario (Human Rights Commission) v. Shelter Corp., [2001] O.J. No. 297 (Ont. Div. Ct.) at para. 43.

LEAF's Book of Authorities at Tab 11.

20. Mental distress damages are distinct from such general damages. In *Fidler*, this Court found that if a contractual promise is such that its breach will foreseeably give rise to mental distress, damages for such harm should be awarded in order to put the plaintiff in the position she would have enjoyed had there been no breach. No separate actionable wrong need be established if

mental distress damages are appropriate under *Hadley v. Baxendale*, and such damages for mental distress for breach of contract should be distinguished from “true” aggravated damages.

Fidler v. Sun Life Assurance Co. of Canada, [2006] S.C.J. No. 30; *Hadley v. Baxendale* (1854), 9 Ex Ch 341, 156 ER 145.

Keays’ Book of Authorities at Tab 22; LEAF’s Book of Authorities at Tab 7.

21. In arbitral jurisprudence, the *Fidler* approach has already been adopted as a logical consequence of the *Parry Sound* decision.

Ontario (Ministry of Community Safety and Correctional Services) and Charlton (Re) (2007), 162 L.A.C. (4th) 71.

LEAF’s Book of Authorities at Tab 12.

22. Mental distress is a major feature of the harm done to women by workplace sex discrimination. Sexual harassment, for example, constitutes a form of discriminatory abuse, experienced differently by different women, that can result in women feeling afraid, alienated, demeaned, intimidated, embarrassed, and objectified. This form of harm is not abnormal, it does not constitute a pathology and it does not flow from some inherent weakness in the employee, but from the breach of the implied term and condition of employment of non-discrimination. An implied term of non-discrimination reflects a legitimate expectation of a respectful work environment, which is analogous to the psychological benefit referenced in *Fidler*. Compensation for mental distress flowing from its breach recognizes the harm that results from workplace discrimination, harm that can range from a disruption to the employee’s life and peace of mind, to a shattering of her sense of self and personal security. Extreme situations of harassment can escalate to become life threatening.

Inquest into the death of Lori Dupont. *Verdict of Coroner’s Jury* (December 11, 2007), Windsor Ontario; Catharine A. MacKinnon, *Sexual Harassment of Working Women*, *supra* at 27 and 47-55.

LEAF’s Book of Authorities at Tabs 9 and 23.

23. Applying *Fidler* in a situation where *Wallace* damages might otherwise have been awarded, the common law also avoids the artificial tool of increasing the notice period, and directly provides damages for mental distress flowing foreseeably from the breach of contract. The

implications of such an approach for victims of discrimination are significant. Compensation for mental distress provides an important remedy for discriminatory conduct in the workplace.

ii. Other Types of Damages

24. Discrimination can also give rise to tangible harms which are redressed through pecuniary damages, and to broader social harms which can be recognized and redressed through punitive and aggravated damages.

25. Since a ‘non-discrimination’ contract term is analytically distinct from the implied obligation to provide reasonable notice of termination, its breach also constitutes a separate actionable wrong, as was required in *Wallace*, in order to ground an award of aggravated and/or punitive damages.

26. Further, the ‘non-discrimination’ implied term applies to the entirety of the employment contract, the damages analysis would not be confined temporally to an assessment of the manner of termination itself, as is the case with regard to breach of the implied reasonable notice requirement.

3. The Need for a Broad and General Comparator Group Analysis

27. This Court has found that the focus in the comparator exercise should be on “the universe of people potentially entitled to equal treatment in relation to the subject matter of the claim” As this Court suggested in *O’Malley*, the appropriate comparator group in the employment context is the other employees of the employer. In this case, one need go no further than that in defining the comparator group, if indeed it is necessary at all. In a case about accommodation of disability a claimant does not seek identical treatment when compared with some other group, but rather seeks to have her needs accommodated.

Hodge v. Canada (Minister of Human Resources Development) (2004), 244 D.L.R. (4th) 257 at para. 25; *O’Malley*, *supra* at para. 17.

LEAF’s Book of Authorities at Tabs 8 and 13.

28. Should it be necessary to identify a comparator group, access to justice for women and other equality-seeking groups must not be undermined by an unduly narrow application of the concept of comparator groups. The importation of the s. 15 *Hodge*-type comparator group analysis

advocated by Honda is inconsistent with a human rights discrimination analysis. In essence, Honda says there is no discrimination because there is no comparator group since Keays is unique. Honda's approach to comparator groups is fundamentally flawed because it would result in the reintroduction of the similarly situated, formal equality analysis, an analysis that makes it virtually impossible to achieve substantive equality and fulfill the purpose of human rights legislation in Canada. The traditional *prima facie* approach, which favours a particularized, effects-based analysis to discrimination in the human rights context, should be applied instead.

Appellant's Factum at paras. 74-78; A. Wright, "Formulaic Comparisons: Stopping the Charter at the Statutory Human Rights Gate" in F. Faraday et al., eds. *Making Equality Rights Real: Securing Substantive Equality Under the Charter* (Toronto: Irwin Law Inc., 2006) at 409.

LEAF's Book of Authorities at Tab 30.

29. The danger in applying a narrow, formalistic comparator group analysis, such as that suggested by Honda, is that it is essentially an exercise in "excessive pigeon-holing" with the attendant problem (often associated with such a narrow "mirror" comparator analysis) that it renders invisible the harm and the unequal effects experienced by the disadvantaged group. The adverse effects are thus erased or labelled merely as disappointing outcomes.

D. Pothier, "Equality as a Comparative Concept: Mirror, Mirror on the Wall, What's the Fairest of Them All?" in *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms* (Markham, Ontario: Butterworths, 2006) S. McIntyre and S. Rogers, eds., at 135, 143, 147-48, 150; D. Majury and D. Gilbert, "Critical Comparisons: The Supreme Court of Canada Dooms Section 15" (2006) 24 Windsor Y.B. Access. Just. 111; *Law Society of British Columbia v. Andrews*, [1989] 1 S.C.R. 143 at para. 166-69.

LEAF's Book of Authorities at Tabs 25 and 24; Keays' Factum at Tab 29.

30. In order for substantive equality to be realized, the identification of comparator groups needs to take account of differences. This requires a higher level of generality of comparators, to enable the drawing of analogies when exact parallels do not exist.

"As in any discrimination analysis, the key is determining who the appropriate comparators are -- who are the "others" with whom the individual is entitled to be equal, in relation to whom the individual is entitled not to be disadvantaged? Artificial differences which place the individual in a class of her own must be avoided: *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143. The reality or "substance" of the individual's situation, as compared with others in relation to the purpose and goal of the anti-discrimination provision, must be seized."

Canadian Egg Marketing Agency v. Richardson, [1998] 3 S.C.R. 157, at para. 125, McLachlin J. in dissent; D. Pothier, "Equality as a Comparative Concept: Mirror, Mirror on the Wall, What's the Fairest of Them All?", *supra* at 135.

LEAF's Book of Authorities at Tabs 4 and 25.

31. A higher level of generality of comparators can be achieved in human rights as these cases arise in the context of certain social areas where there is a pre-existing and well defined comparator group, e.g.: other employees, other tenants in a building, the other clients or customers of a service provider.

Andrea Wright, "Formulaic Comparisons: Stopping the Charter at the Statutory Human Rights Gate", *supra* at 409.

LEAF's Book of Authorities at Tab 30.

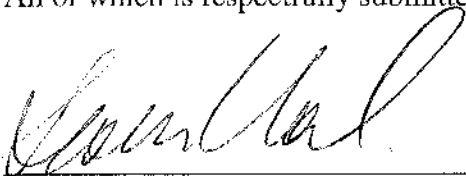
PART IV- SUBMISSIONS ON COSTS- NOT APPLICABLE

PART V- ORDERS REQUESTED

32. LEAF respectfully requests permission of the Court to present oral argument at the hearing of the appeal and cross-appeal.

33. LEAF requests that this Court recognize that human rights obligations constitute an implied term of contract, that a variety of damages can flow directly from the breach of such a term and that mental distress damages are available. LEAF requests that this Court recognize the need for broad and general comparisons in discrimination analyses so that equality claims are not unfairly dismissed because they fail to meet unpredictable and formalistic applications of a comparator group analysis.

All of which is respectfully submitted this 10TH day of January, 2008.



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PART VII – STATUTORY REFERENCES

Charte des droits et libertés de la personne, L.R.Q. c. C-12

DROIT À L'ÉGALITÉ DANS LA RECONNAISSANCE ET L'EXERCICE DES DROITS ET LIBERTÉS

Discrimination interdite.

10. Toute personne a droit à la reconnaissance et à l'exercice, en pleine égalité, des droits et libertés de la personne, sans distinction, exclusion ou préférence fondée sur la race, la couleur, le sexe, la grossesse, l'orientation sexuelle, l'état civil, l'âge sauf dans la mesure prévue par la loi, la religion, les convictions politiques, la langue, l'origine ethnique ou nationale, la condition sociale, le handicap ou l'utilisation d'un moyen pour pallier ce handicap.

Motif de discrimination.

Il y a discrimination lorsqu'une telle distinction, exclusion ou préférence a pour effet de détruire ou de compromettre ce droit.

1975, c. 6, a. 10; 1977, c. 6, a. 1; 1978, c. 7, a. 112; 1982, c. 61, a. 3.

Harcèlement interdit.

10.1. Nul ne doit harceler une personne en raison de l'un des motifs visés dans l'article 10.

1982, c. 61, a. 4.

Charter of human rights and freedoms, R.S.Q. c. C-12

RIGHT TO EQUAL RECOGNITION AND EXERCISE OF RIGHTS AND FREEDOMS

Discrimination forbidden.

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination defined.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

1975, c. 6, s. 10; 1977, c. 6, s. 1; 1978, c. 7, s. 112; 1980, c. 11, s. 34; 1982, c. 61, s. 3.

Harassment.

10.1. No one may harass a person on the basis of any ground mentioned in section 10.

Civil Code of Québec, C.c.Q.

DIVISION I

CONDITIONS OF LIABILITY

§ 1. — General provisions

1457. Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person by such fault and is liable to reparation for the injury, whether it be bodily, moral or material in nature.

He is also liable, in certain cases, to reparation for injury caused to another by the act or fault of another person or by the act of things in his custody.

1991, c. 64, a. 1457; 2002, c. 19, s. 15.

2087. The employer is bound not only to allow the performance of the work agreed upon and to pay the remuneration fixed, but also to take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee.

1991, c. 64, a. 2087.

SECTION I

DES CONDITIONS DE LA RESPONSABILITÉ

§ 1. — Dispositions générales

1457. Toute personne a le devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposent à elle, de manière à ne pas causer de préjudice à autrui.

Elle est, lorsqu'elle est douée de raison et qu'elle manque à ce devoir, responsable du préjudice qu'elle cause par cette faute à autrui et tenue de réparer ce préjudice, qu'il soit corporel, moral ou matériel.

Elle est aussi tenue, en certains cas, de réparer le préjudice causé à autrui par le fait ou la faute d'une autre personne ou par le fait des biens qu'elle a sous sa garde.

1991, c. 64, a. 1457.

2087. L'employeur, outre qu'il est tenu de permettre l'exécution de la prestation de travail convenue et de payer la rémunération fixée, doit prendre les mesures appropriées à la nature du travail, en vue de protéger la santé, la sécurité et la dignité du salarié.

1991, c. 64, a. 2087.

Labour standards, An Act respecting, R.S.Q. c. N-1.1, s.81.18

PSYCHOLOGICAL HARASSMENT

Interpretation.

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.

Vexatious behaviour.

A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

Right of the employee.

81.19. Every employee has a right to a work environment free from psychological harassment.

Duty of employers.

Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.

RECOURSE AGAINST PSYCHOLOGICAL HARASSMENT

Complaint to Commission.

123.6. An employee who believes he has been the victim of psychological harassment may file a complaint in writing with the Commission. Such a complaint may also be filed by a non-profit organization dedicated to the defence of employees' rights on behalf of one or more employees who consent thereto in writing.

Normes du travail, Loi sur les, L.R.Q. c. N-1.1

LE HARCÈLEMENT PSYCHOLOGIQUE

Définition.

81.18. Pour l'application de la présente loi, on entend par « harcèlement psychologique » une conduite vexatoire se manifestant soit par des comportements, des paroles, des actes ou des gestes répétés, qui sont hostiles ou non désirés, laquelle porte atteinte à la dignité ou à l'intégrité psychologique ou physique du salarié et qui entraîne, pour celui-ci, un milieu de travail néfaste.

Conduite grave.

Une seule conduite grave peut aussi constituer du harcèlement psychologique si elle porte une telle atteinte et produit un effet nocif continu pour le salarié.

2002, c. 80, a. 47.

Droit du salarié.

81.19. Tout salarié a droit à un milieu de travail exempt de harcèlement psychologique.

Devoir de l'employeur.

L'employeur doit prendre les moyens raisonnables pour prévenir le harcèlement psychologique et, lorsqu'une telle conduite est portée à sa connaissance, pour la faire cesser.

2002, c. 80, a. 47.

Plainte à la Commission.

123.6. Le salarié qui croit avoir été victime de harcèlement psychologique peut adresser, par écrit, une plainte à la Commission. Une telle plainte peut aussi être adressée, pour le compte d'un ou de plusieurs salariés qui y consentent par écrit, par un organisme sans but lucratif de défense des droits des salariés.

2002, c. 80, a. 68.