# Workplace Violence Under Federal Law: The Employer's Duty To Appoint A Competent Person To Investigate

**February 01, 2016**

On November 30, 2015, the Federal Court of Appeal released an important judgment regarding the duty of federally-regulated employers to appoint a "competent person" to investigate a workplace violence complaint under Part XX of the *Canada Occupational Health and Safety Regulations* ("the Regulations").

## Facts

In that case, a poultry inspector at the Canadian Food Inspection Agency (the "Employer" ) submitted a written complaint alleging favouritism, unfair treatment, humiliation and disrespectful treatment in the workplace, without referring specifically to "workplace violence" as such or identifying the complaint as a workplace violence complaint under the Regulations.

In response, the Employer appointed one of its directors to undertake a "fact-finding" mission to review the concerns raised by the complainant. The conclusion of the fact-finding process was that the allegations, if believed to be true, did not constitute harassment and thus did not warrant further investigation.

After a health and safety officer issued a direction pursuant to the *Canada Labour Code* indicating that the Employer had failed to appoint a "competent person" as required by the Regulations, the Employer filed an appeal to the Appeals Officer. The latter allowed the appeal and set aside the direction on the basis that the Employer had not been made aware of the alleged workplace violence and that it could not have been the legislator's intent to require that an investigator be appointed for every complaint qualified by a complainant as "workplace violence", regardless of the facts alleged.

## Decision

The issue to be determined by the Federal Court of Appeal (the "Court" ) was "whether the Appeals Officer could find that an employer is entitled to assess a complaint of workplace violence before being required to appoint a 'competent person' to investigate the matter." The Court agreed with the application judge and found that the Appeals

Officer erred in concluding that the Employer had not been aware of a workplace violence allegation and was therefore under no obligation to appoint a competent person to investigate the matter. In making that determination, the Court mentioned that "the appointment of a competent person, that is, a person who is impartial and is seen by both parties to be impartial, is an important safeguard to ensure the fulfillment of [the Regulations'] objective."

The Court ruled that the complaint was not clearly vexatious or frivolous in the present case, and that it was not the employer's role to decide at that early stage, without even meeting with the employee, whether the particular conduct alleged was serious in the circumstances so as to constitute workplace violence. The Court held that such determination can only be made by a competent person with a full understanding of the circumstances, following an investigation under the Regulations. Therefore, a competent person should have been appointed by the Employer to investigate the matter.

It should be noted that, in the circumstances of the case before the Court, it was not disputed that workplace violence may encompass harassment, and that psychological harassment can reasonably be expected to cause harm or illness in some circumstances.

## Impact On Employers

As a result of this decision by the Federal Court of Appeal, it is now clear that, unless it is plain and obvious on its face that the allegations do not relate to workplace violence, employers have a duty to appoint a competent person to investigate a complaint of workplace violence if the matter remains unresolved. Thus, while employers are entitled to undertake a preliminary review of a complaint with a view to resolving the matter informally with the complainant, any "full-fledged investigation" must be left to a competent person agreed to by the parties and with knowledge, training and experience in these matters.

By

Raphaël Girard

Expertise

Labour & Employment

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

**blg.com**

## BLG Offices


**Calgary**

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

**Ottawa**

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

**Vancouver**

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749



The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.