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

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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

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