Couture v. Kleen-Flo Industries Ltd.: Confirmed dismissal of a senior executive for gross misconduct and harassment

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BLG recently obtained a favourable ruling from the Superior Court in the matter of *Couture v. Kleen Flo Tumbler Industries Limited*, 2023 QCCS 2175, which involved allegations of psychological and sexual harassment against a senior executive of the organization.

Background

The employer terminated one of its two most senior executives in Québec, Mr. Guy Couture, despite his nearly 40 years of service and unblemished disciplinary record.

The employer made this decision pursuant to allegations of psychological and sexual harassment by the vast majority of its staff, as well as allegations that his conduct with clients as well as employees was unacceptable.

Mr. Couture's conduct had in fact become so unbearable that it led 13 employees to file a complaint against him. Subsequently, all the office and warehouse workers decided to absent themselves from the workplace for several days to protest against Mr. Couture's hostile attitude.

This prompted the employer to engage an external and impartial investigation firm to get to the bottom of the situation. A thorough investigation was carried out in accordance with industry best practices. After meeting with all employees, the investigator issued a report confirming most of the allegations.

Based on the report, the employer decided to dismiss Mr. Couture immediately for cause, without prior notice or indemnity in lieu thereof. It was obvious to the employer that Mr. Couture could have no further contact with the employees and no longer had a place in the organization. His conduct over the years had had a negative impact on the employees and the work environment, and employees needed to be protected to ensure they suffered no further harm.

At trial, Mr. Couture challenged the grounds for his dismissal and claimed $500,000 for severance and damages.

Details of the judgment

After hearing the evidence, Superior Court judge Danielle Turcotte concluded that the employer had succeeded in showing valid grounds for dismissal, which justified Mr. Couture's firing without prior notice or indemnity in lieu thereof.

Judge Turcotte noted that the "flawless" testimony of the 11 witnesses for the employer fully corroborated the independent investigation firm's report. The evidence showed, for example, that:

- Mr. Couture was an authoritarian who brooked no argument;
- Employees walked on egg shells when they spoke to him, for fear of being upbraided;
- Mr. Couture maligned virtually everyone. He was openly disrespectful towards women and disparaged visible-minority employees;
- He swore to bolster his epithets;
- He was condescending to sales representatives;
- He made off-colour comments on an employee's feminine attributes;
- He placed his hand on an employee's thigh, making her extremely uncomfortable;
- He was disloyal to his employer, particularly by denigrating management, maintaining that head office employees were idiots, and making pejorative comments on their ethnic origin;
- Judge Turcotte also noted that his lack of civility was evident during cross-examination, when he disrespectfully answered defence counsel's questions.

In light of the evidence, judge Turcotte concluded that Mr. Couture's dismissal was justified, despite the absence of progressive discipline and his nearly 40 years of service.

The judge pointed out that all employers have the duty to protect the health, security and dignity of their employees. In her words, "[TRANSLATION] When the harassment originates with a person in authority in the organization, the employer must act promptly to curtail the devastating effect such conduct can have within the workplace."[1]

Judge Turcotte noted that as a manager, Mr. Couture should have been a role model for others, and his conduct should have reflected the organization's values. Moreover, because of his position, it was his duty to ensure that the workplace was free of psychological or sexual harassment of any kind.

However, judge Turcotte concluded, Mr. Couture had himself imperiled employees' well-being by engaging in harassment. Not only did his attitude violate the organization's values, it poisoned the work environment.

The evidence also showed that Mr. Couture's inappropriate conduct went on for years. Mr. Couture argued that the length of time taken by employees to complain about his behaviour should weigh in his favour. Judge Turcotte found however that the employees

all feared potential retaliation for filing a complaint, which explains why they did not do so initially.

As for Mr. Couture's argument that the employer should have applied progressive discipline before dismissing him, judge Turcotte rejected it, rightly asserting that progressive discipline does not apply to a senior executive like him, who was "at the top of the company's hierarchy."

Furthermore, judge Turcotte concluded that Mr. Couture's ill temperament was longstanding and deep-rooted, and unlikely to change. Throughout the investigation and at trial, Mr. Couture persistently denied or tried to minimize his alleged faults and showed no signs of remorse. In judge Turcotte's view, given Mr. Couture's state of denial and lack of remorse, there was no hope of rehabilitation.

Based on all the foregoing, judge Turcotte concluded that Mr. Couture's dismissal was an appropriate sanction. Mr. Couture's claim was dismissed in its entirety, with costs.

Takeaways

This decision underscores the following principles:

- Harassment in a work environment is unacceptable and may warrant immediate dismissal, without prior notice or indemnity in lieu thereof.
- Every employer must take appropriate measures to protect the health, safety and dignity of its employees. This includes reasonable measures to prevent psychological and sexual harassment, and to put a stop to it when such conduct is brought to the employer's attention.
- As soon as an employer is informed of alleged psychological, sexual or discriminatory harassment, or any other inappropriate conduct in the work environment, it is well advised to consult a legal advisor to ascertain its obligations and then take immediate action.
- While the principle of progressive discipline generally applies before escalating to dismissal, it is not always advisable to adhere to it, depending on the facts of each matter.

Contact us

If you have any questions regarding your labour relations or the management of a labour dispute, please do not hesitate to reach out to our contacts below, or any member of our Labour and Employment Group.

[1] Paragraph 91 of the judgment.

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