

FOR A HEALTHY WORK ENVIRONMENT  
FREE FROM VIOLENCE AND HARASSMENT

INTERVENTION GUIDE ON

# Conflict, Incivility, Violence, and Harassment at Work



Make it **stop.**

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To download and print individual information sheets and appendices, go to [makeitstop.ca](http://makeitstop.ca).

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## For Workplaces Free of Violence and Harassment

The CSN has been addressing issues related to violence and harassment at work for many years now. That is how it works to support unions to assume more control of these issues, in terms of human resources, through the support of union advisers from federations and CSN services, as well as by offering specialized training activities and producing multiple tools. Besides this intervention kit, the CSN is making various tools available to its affiliated unions so that they can recognize, understand, and intervene to put an end to situations of violence and harassment at work. These tools are all located in the CSN's [occupational health and safety training portal](#), as well as at [makeitstop.ca](#) in order to be easily accessible. They are available in various formats and provide unions with what they need to take action.

This intervention guide was developed to meet the needs of unions and union officers. It proposes an intervention process that complements the overall approach in relation to conflict, incivility, violence, and harassment at work undertaken in the first kit.

Despite all of the prevention efforts made, various, often complex, problematic situations can still occur in a given workplace. This new guide has the aim of defining the main intervention steps for when such situations occur and equipping union officers to assist them with intervening appropriately. The preamble includes a brief overview of the guide's contents. Appendices, one of which contains a number of information sheets, were also prepared to supplement this document. Their contents are described in the pages that follow. To facilitate access and to encourage the printing of copies for your members, we have separated them from the guide.

## **SOME CLARIFICATIONS**

To enhance readability, the term “harassment” includes all types of workplace harassment. The phrase “persons directly involved” refers to both those who report and experience problematic situations and those who are reported.

## **PREAMBLE**

The framework for this guide is the same as that used in our *For a Healthy Work Environment Free From Violence and Harassment* prevention kit. The first guide was on prevention and alternative forms of conflict management; this guide uses a similar approach and the sequence of interventions suggested in the first guide. An informal method to try to resolve the problematic situation will first be proposed, as well as legal recourse that can be brought at the same time.

Skills related to the expertise of union representatives who assist those involved are important; they will be described throughout the various reporting steps discussed in this guide. We will also discuss basic concepts related to violence and harassment to allow for an understanding of various situations that must be handled. We will use the definitions from the prevention kit.

At some points, we will refer to information sheets to be given, for example, to those reporting situations during the first meeting with a union officer. These sheets will allow individuals to get a better read on problematic situations being reported.

Interpersonal skills are also important and can have a major impact on the process when they are combined with expertise. We feel they have a key role in the process. In this regard, we will cover what needs to be done before beginning to handle a situation involving conflict, incivility, violence, or harassment. We will also discuss the main pitfalls that can occur in these types of situations.



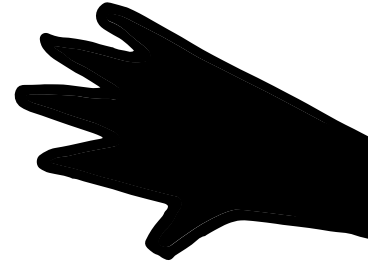
# PART 1





# Definitions of Violence and Harassment at Work

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Psychological harassment situations reported to union representatives can vary in nature: they can involve incivility, ill-defined roles that lead to a conflict between colleagues, etc. It is therefore useful to establish points of reference by defining various situations that could occur. These definitions will allow for, among other things, better assessing reported situations. This section uses the definitions from the *For a Healthy Work Environment Free From Violence and Harassment* prevention kit. To avoid repetition, we did not include the various examples in the policy and guide. You can refer to those documents to get an overview of the different ways that each of these situations can occur.

## Violence at work

There is violence at work when the behaviour (attitudes, actions, or words) of an individual or group of individuals intentionally or unintentionally has an adverse effect on the physical or psychological safety or well-being of another individual or group of individuals.

Expressing anger is not the same thing as engaging in violence. Anger is an emotion that can sometimes seem aggressive when expressed. Anger and aggressivity become violence when they are expressed with the intention to coerce or dominate another person.

## Harassment at work

Harassment can take many forms: psychological or sexual harassment, discriminatory harassment, and abuse of power or authority. All of these forms of harassment have the following characteristics:

- Behaviour that is generally repeated and unwanted;
- Hostile actions, words, or gestures that are repeated over a period of time. It should be noted that a single act that has a negative effect on a person's dignity, health, or safety can be considered harassment;

- Vexatious conduct. Harassment presents as vexatious behaviour that is degrading, offensive, and humiliating;
- Behaviour that has an effect on the dignity or physical and psychological integrity of a person. Behaviour associated with harassment at work can alter the physical and mental health of individuals and have a negative effect on their dignity;
  - The harmful effect on dignity, respect and self-esteem is in violation of basic human rights: “Every person has a right to the safeguard of his dignity, honour and reputation”;<sup>1</sup> and
- Actions that can create unfavourable working conditions, including job loss, resignation, or dismissal.

## **TYPES OF HARASSMENT**

### **Psychological harassment**

“[A]ny 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. For greater certainty, psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.”<sup>2</sup>

### **Mobbing**

Mobbing is another form of psychological harassment that involves a series of hostile remarks or actions expressed or exhibited by one or more individuals over a relatively long period of time toward other individuals who become scapegoats and who, often because they are different, are targeted for persecution.

### **Discriminatory harassment**

“[B]ehaviour characterized by repeated and unsolicited words, actions or gestures of a vexatious or contemptuous nature, that could either undermine the dignity or the physical or psychological integrity of the individual or lead to unfavorable working conditions or dismissal, based on any of the grounds enumerated in [section] 10 of the *Charter of Human Rights and Freedoms*.”<sup>3</sup>

The grounds enumerated in section 10 of the Charter are “race, colour, sex, gender identity or expression, 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.”

### **Sexual harassment and violence**

Sexual harassment and violence is defined as “behaviour characterized by [generally] repeated and unsolicited sexually connotative remarks, acts or gestures that could undermine the dignity or the physical or psychological integrity of the individual or lead to unfavorable working conditions.” A single occurrence may constitute sexual harassment.

### **Abuse of power or authority**

“Abuse of authority is a form of harassment [...] that occurs when an individual misuses the power and authority inherent in his or her position to endanger a person’s job, undermine the person’s performance of that job, threaten the person’s economic livelihood, or [interfere with] the person’s career [in any way]. It includes intimidation, threats, blackmail and coercion.”

#### **INCIVILITY**

Incivility is defined as follows: “[L]ow-intensity deviant behavior with ambiguous [or unclear] intent to harm the target, in violation of workplace norms for mutual respect. Uncivil behaviors are characteristically rude and discourteous, displaying a lack of regard for others.”<sup>4</sup> Incidents of incivility must be taken seriously because they have a negative impact on the work atmosphere. Moreover, incivility is often a component of a conflict that is deteriorating and that could result in psychological harassment if nothing is done to manage the situation.

In the workplace, everyone must exhibit civility in order to maintain a healthy work environment. Civility refers to a set of rules of conduct that ensure respect and foster community.

#### **THE FIVE RULES OF CIVILITY**

**Respect ◦ Politeness ◦ Courtesy ◦ Co-operation ◦ Manners**



## What workplace harassment is not

All types of situations can be mistaken for harassment because they are difficult to experience or because they are painful and lead to worry, stress, or anxiety. The following definitions describe these situations well.

### **STANDARD MANAGEMENT RIGHTS**

Employers carrying out their legitimate management rights is not a form of abuse, even though workers can experience discomfort.

Management rights are defined as employers' rights to manage their employees and to make decisions related to business profitability in the interest of smooth business operations. Management rights include, in particular, the following: assignment of work, day-to-day management of work performance, regular attendance, and absenteeism, and of discipline and disciplinary measures, application of disciplinary measures, termination, layoffs, and dismissals.<sup>5</sup>

The employer thus has quite wide-ranging freedom to act, ensure that work procedures are complied with, and ensure that a reasonable amount of work is being carried out, as long as the employer acts in a respectful manner, as long as the employer's interventions are made based on duties and not based on the person, and as long as the employer does not exercise these management rights in an abusive, unreasonable, or discriminatory manner. It is important to note that management rights also include the right for managers to make errors.

A decision is abusive not because it is an error, but because, to use the criteria established by Morin and Blouin, a reasonable person would not have made the same decision under the same circumstances.<sup>6</sup>

Employee behaviour will also be taken into account when assessing the situation. The more inappropriate it is, the more that severe measures to correct it can be expected. The following three questions can allow for seeing the situation more clearly:

1. Are the measures that were implemented fair and equitable? Did the employer act in the same way in similar situations?
2. Are the measures that were implemented in line with the regular operations of the organization or business?
3. Would a reasonable employer have acted in the same way?

If you answered “no” to any of these questions, monitor the situation—you may have experienced an abuse of authority.



## CONFLICTS

Workplaces are no different than other environments—conflicts can arise. By itself, a conflict does not constitute psychological harassment. Conflict involves a symmetrical relationship between individuals. Criticism is expressed in an evident manner by those involved in the conflict. Each of these individuals tries to retain control. When they are well managed, conflicts can lead to the development or improvement of certain methods. However, as the saying goes, “the longer we wait, the worse it will get,” which could definitely be true in the case of conflicts. Until a conflict is resolved, it tends to escalate, and the individuals involved may thus try to find new allies. At this point in time, the situation may shift and become a case of harassment; one of the individuals can denigrate, insult, or criticize the work of another person involved in the conflict, or even start rumours about such a person. When they are not well managed, conflicts can also become situations that lead to violence and harassment.

## STRESS

Stress may be triggered by any aspect of our environment that requires an action. It is our body’s response to such a situation. This reaction is normal and essential for our survival.

That being said, a workplace with multiple sources of stress can be a breeding ground for situations of violence and harassment. Sources of stress include work overload, little authority to make decisions, lack of support or acknowledgement, poorly defined roles, incomplete or ambiguous communication, etc. Unlike stress, which is only destructive in excess, harassment is destructive by its very nature.<sup>7</sup>

It has been found in scientific literature that exposure to a strong psychological demand combined with little authority to make decisions can lead to repercussions related to the health of individuals and their social relationships, particularly when the situation is accompanied by little social support and acknowledgement. As such, cases of incivility, interpersonal conflicts, violence, and harassment are more common and frequent in environments in which such psychosocial risks are found. For this reason, it is important to detect them and intervene in a preventative manner to eliminate, control, or reduce them. To learn more about this subject, see the CSN’s [\*Guide for the Prevention of Violence and Harassment at Work\*](#). To learn how to act in relation to organizational causes of these problematic situations, see the prevention approach and suggested tools [on the CSN’s occupational health and safety training portal](#). They may be of great use. You can also find the prevention guide mentioned above on the portal.

## DIFFICULT WORKING CONDITIONS AND PROFESSIONAL CONSTRAINTS

Some working conditions may seem difficult and have negative consequences on the health of workers without constituting harassment. This is the case, for example, for

work overload. In the same way, changes may occur, such as work schedule or duty variations, and may lead to an annoyance for workers. However, as long as these changes do not affect staff members in an arbitrary manner, they do not constitute harassment. If they do seem arbitrary, it is important to be vigilant and pay special attention to the situation.

Things would be different if the work overload or schedule, position, or duty variations were imposed to discourage staff members from remaining in their positions and to push them to resign. This is what took place in 2007 and 2008 at France Télécom (which has since become Orange), which led to a wave of suicides. In December 2019, three former France Télécom executives were charged with institutional moral harassment.<sup>8</sup> The business itself was given the maximum penalty—a fine of 75,000 euros. This decision, in which the business was found guilty of moral harassment, is itself truly a historic step forward. Note that the union movement was the driving force behind the trial. The union organizations were the first to inform the authorities and denounce management processes, which were drastically worsening employee working conditions.

## Legal obligations and duties related to workplace violence and harassment

There are many legal provisions related to workplace violence and harassment. Most of them impose obligations on the employer to ensure healthy work environments. As a result, the employer must intervene when these types of situations occur. These legal provisions can therefore, as appropriate, be used to argue that the employer must fulfill its obligations.

### **CHARTER OF HUMAN RIGHTS AND FREEDOMS**

Quebec's *Charter of Human Rights and Freedoms* prohibits discrimination for the reasons identified in section 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, gender identity or expression, 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 exists where such a distinction, exclusion, or preference has the effect of nullifying or impairing such right.

Section 46 of Quebec's Charter also stipulates the obligation to respect the health, safety, and physical well-being of persons:

Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment [that] have proper regard for his health, safety and physical well-being.

In Quebec, the employer's responsibility may also be stipulated in various forms of legislation, including the *Civil Code of Québec*, the *Act respecting labour standards*, and the *Act respecting occupational health and safety*, as well as in collective agreements.

### **CIVIL CODE OF QUÉBEC**

Article 2087 of the *Civil Code of Québec*<sup>9</sup> also provides that employers must take the necessary measures to protect the health, safety, and dignity of employees:

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.

### **ACT RESPECTING LABOUR STANDARDS**

The *Act respecting labour standards*<sup>10</sup> includes provisions related to psychological harassment in sections 81.18 and 81.19.

- **Section 81.18** provides a definition of psychological harassment as described in the section entitled “Types of harassment.”
- **Section 81.19** refers to the employer's obligation to provide a workplace free of psychological harassment:
  - “Every employee has a right to a work environment free from psychological harassment.”
  - “Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.”

Note that since January 1, 2019, the employer must adopt and make available a psychological harassment prevention and complaint processing policy that includes a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.

- **Section 123.7** provides for a period of two years from the last occurrence of psychological or sexual harassment to file a grievance.

### **ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY**

The *Act respecting occupational health and safety*<sup>11</sup> grants rights to employees and sets obligations for employers.

- **Article 9:** “Every worker has a right to working conditions that have proper regard for his health, safety and physical well-being.”
- **Article 12:** “A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical well-being, or would expose another person to a similar danger.”
- **Article 13:** “No worker may, however, exercise his right under section 12 if his refusal to perform the work puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions under which the work is to be performed are ordinary conditions in his kind of work.”
- **Article 51** involves, for the employer, a general duty of prevention, by requiring the employer to take the necessary measures to protect the health and ensure the safety and physical well-being of employees. The employer must, in particular,
  - “see that the establishments under his authority are so equipped and laid out as to ensure the protection of the worker;”
  - “ensure that the organization of the work and the working procedures and techniques do not adversely affect the safety or health of the worker;”
  - “use methods and techniques intended for the identification, control and elimination of risks to the safety or health of the worker;”
  - “supply safety equipment and see that it is kept in good condition;” and
  - “give the worker adequate information as to the risks connected with his work and provide him with the appropriate training, assistance or supervision to ensure that he possesses the skill and knowledge required to safely perform the work assigned to him[.]”

## OTHER LEGISLATION

In general, violence and sexual assault are covered under the *Criminal Code*,<sup>12</sup> which allows all victims to press charges. If victims experienced personal loss, they may bring proceedings pursuant to the *Civil Code of Québec*.

Any person who is the victim of sexual assault or violence can also make use of the provisions of the *Crime Victims Compensation Act*<sup>13</sup> and receive compensation related to the application of the Act and administered by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST).

For businesses under federal jurisdiction, the *Canadian Human Rights Act*<sup>14</sup> provides, in section 14, that “[i]t is a discriminatory practice [...] to harass an individual on a prohibited ground of discrimination.” Prohibited grounds are listed in section 3 and subsection 14(2) of this Act.



The *Canada Occupational Health and Safety Regulations*<sup>15</sup> include a provision on the prevention of violence in the workplace and requires employers, pursuant to paragraph 20.3(a), “to provide a safe, healthy and violence-free work place[.]”

An Act to amend the Canada Labour Code (*harassment and violence*),<sup>16</sup> the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1 was adopted in October 2018. Part 1 amends the *Canada Labour Code* “to strengthen the existing framework for the prevention of harassment and violence, including sexual harassment and sexual violence, in the work place.” At the time of writing, the coming into force of these provisions is planned for January 1, 2021.

**Here is an overview of the main amendments to the Canada Labour Code:<sup>17</sup>**

The concepts of violence and harassment have been added to the *Canada Labour Code* and are defined in the following way:

**Harassment and violence:** “[A]ny action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment[.]”

The section on the prevention of accidents, injuries, and illnesses has been amended to include these concepts in section 122.1:

The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.

The employer must investigate these matters. Paragraph 125(1)(c) of the Code has been replaced by what follows:

[E]xcept as provided for in the regulations, investigate, record and report, in accordance with the regulations, all accidents, occurrences of harassment and violence, occupational illnesses and other hazardous occurrences known to the employer[.]

The following obligations are also imposed on the employer in paragraph 125(1)(z.16). The employer must thus

- “(z.16) take the prescribed measures to prevent and protect against harassment and violence in the work place, respond to occurrences of harassment and violence in the work place and offer support to employees affected by harassment and violence in the work place;”
- “(z.161) ensure that employees, including those who have supervisory or managerial responsibilities, receive training in the prevention of harassment

and violence in the work place and are informed of their rights and obligations under this Part in relation to harassment and violence;”

- “(z.162) undergo training in the prevention of harassment and violence in the work place;” and
- “(z.163) ensure that the person designated by the employer to receive complaints relating to occurrences of harassment and violence has knowledge, training and experience in issues relating to harassment and violence and has knowledge of relevant legislation[.]”

## Union obligations

The *Labour Code*<sup>18</sup> imposes on the union in section 47.2 a duty of fair representation of employees in its bargaining unit. In section 47.3, it also provides for recourse in the event of failure to provide representation.

- **Section 47.2:** “A certified association shall not act in bad faith or in an arbitrary or discriminatory manner or show serious negligence in respect of employees comprised in a bargaining unit represented by it, whether or not they are members.”
- **Section 47.3:** “If an employee who has been dismissed or the subject of a disciplinary sanction or who believes he has been the victim of psychological harassment under sections 81.18 to 81.20 of the Act respecting labour standards ([chapter N 1.1](#)), believes that, in that respect, the certified association has contravened section 47.2, the employee must, if he wishes to rely on that section, file a complaint with and apply in writing to the Tribunal for an order directing that the employee’s claim be referred to arbitration.”

## Employee obligations

It is important to note that employees do not only have rights—they also have obligations.

- **Section 49 of the Act respecting occupational health and safety:** “A worker must [...] take the necessary measures to ensure his health, safety or physical well-being [and] see that he does not endanger the health, safety or physical well-being of other persons [...]”
- **Article 2088 of the Civil Code of Québec:** “The employee is bound not only to perform his work with prudence and diligence, but also to act faithfully and honestly and not use any confidential information he obtains in the performance or in the course of his work.”

**Obligation of civility:** Workers are required to act with civility in their relationships with both their superiors and their colleagues. This obligation is not provided for in

legislation, but it has been developed in doctrine and case law. Under this obligation of civility, employees must conduct themselves with politeness appropriate to the workplace, refrain from bringing about interpersonal conflicts, and strive to maintain harmonious working relationships.

## Collective agreements

All collective agreements are deemed to include the provisions on psychological harassment that were added to the *Act respecting labour standards* and that came into force in 2004.

Thus, they must include

- the definition of the concept of psychological harassment;
- the right of employees to a workplace that is free of psychological harassment;
- the employer's obligation to take reasonable measures to prevent and put an end to psychological harassment;
- the employer's obligation to “adopt and make available [...] a psychological harassment prevention and complaint processing policy that includes [...] a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature”; and
- the fact that recourse may only be sought within two years of the last occurrence of psychological or sexual harassment.

It is important to negotiate clauses for the collective agreement that promote a culture of respect and civility, as well as include a commitment to treat employees fairly. See the [Guide for the Prevention of Violence and Harassment at Work](#) to learn what can be negotiated. The guide is also available on the CSN's [occupational health and safety training portal](#).

## Recourse available to victims of workplace violence or harassment

To avoid repetition, we summarized the information on legal recourse in cases of workplace violence and harassment, as we had done for the definitions at the beginning of Part 1. More details can be found in the [For a Healthy Work Environment Free From Violence and Harassment prevention kit](#).

### **WHEN THERE IS AN EMPLOYMENT INJURY**

According to section 2 of the *Act respecting industrial accidents and occupational diseases*,<sup>19</sup> an employment injury “means an injury or a disease arising out of or in the course of

an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation”. Such an injury can arise from violence or harassment at work, and the following recourse is available:

### 1. The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)

- For employment injuries within the meaning of the *Act respecting industrial accidents and occupational diseases*, victims of violence or harassment must file a claim to apply for indemnities with the CNESST.
  - To receive compensation from the CNESST, victims of violence or harassment must demonstrate that they have experienced an employment injury—either an industrial accident or an occupational disease. Generally, cases of violence or harassment are indemnified on the basis of the industrial accident.
  - The *Act respecting industrial accidents and occupational diseases* defines the concept of “industrial accident” in the following way in section 2: “a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him.”
- If the employment injury is recognized, the victim may receive, for example, an income replacement indemnity, in the event of loss of income; reimbursement of expenses associated with services provided by health care professionals, medication, etc.
- Victims have **six months**<sup>20</sup> from the last occurrence to file a claim with the CNESST.

If you work for a business or organization under federal jurisdiction or under provincial jurisdiction, but outside of Quebec, the claim must be filed with the organization that provides indemnities for employment injuries, accidents, and occupational diseases in your province. Make sure to check deadlines, because the provisions related to this matter in the legislation vary between provinces. It is strongly recommended that the union representative assist the victim with properly completing the required form. You can draw on the facts collected in the Problematic Situation Report Form (Appendix 3).

### 2. Grievance

- A grievance must also be filed since the arbitrator and the CNESST or the Administrative Labour Tribunal have different roles and order powers. Unlike the CNESST or the Administrative Labour Tribunal, an arbitrator may, in particular, order the employer to implement specific measures to put an end to the psychological harassment. In contrast, if the psychological harassment causes an employment injury, only the CNESST can order compensation. The arbitrator cannot order indemnities for the period during which the employee is a victim of an employment injury.<sup>21</sup> When the Administrative Labour Tribunal considers it likely that psychological harassment led the employee to sustain an employment injury, it reserves its decision with regard to paragraphs 2, 4,

and 6 of article 123.15 of the Act respecting labour standards. The arbitrator can, however, determine remedial measures outside of the period during which the employee was a victim of an employment injury.

Victims have **two years** from the last occurrence of psychological or sexual harassment to file a grievance.

If you work for a business or organization under federal jurisdiction or under provincial jurisdiction, but outside of Quebec, you are not covered by the *Act respecting labour standards*. Grievances continue to serve as a method of recourse for contesting cases of psychological and sexual harassment. Naturally, the grievance deadline of two years pursuant to section 123.7 of the *Act respecting labour standards* does not apply. The deadline for this recourse is that in effect in or deemed to be part of your collective agreement.

## **WHEN THERE IS NO EMPLOYMENT INJURY**

Even when there is no employment injury, recourse is available to a unionized employee who experiences harassment or violence at work.

### **1. Grievance**

A grievance should be filed in situations in which the violence and harassment did not lead to absences or a need for care.

In this case, the grievance must be filed within **two years** of the last occurrence of psychological or sexual harassment.

### **WHY FILE A GRIEVANCE?**

Grievances allow for protecting the rights of the alleged victim of violence or harassment, because they are the only recourse for unionized employees when an employment injury has not occurred, as previously mentioned. Grievances also allow for reporting a problematic situation to the employer. It is therefore recommended that the investigation begin quickly after the reporting of the problematic situation. It is encouraged to file the grievance as soon as possible to ensure that recourse remains available. A grievance can always be withdrawn if it has no grounds or if there is a satisfactory agreement that allows for resolving the situation. It is always possible, even after filing a grievance, to use various alternative methods of managing disputes to try to resolve the problematic situation. These often have the advantage of putting an end to the situation. To learn more, see Information SHEET 5 of APPENDIX 8, [Methods for Managing Disputes](#).

Section 123.15 of the *Act respecting labour standards* provides grievance arbitrators with the following powers:

1. “ordering the employer to reinstate the employee;”
2. “ordering the employer to pay the employee an indemnity up to a maximum equivalent to wages lost;”
3. “ordering the employer to take reasonable action to put a stop to the harassment;”
4. “ordering the employer to pay punitive and moral damages to the employee;”
5. “ordering the employer to pay the employee an indemnity for loss of employment;”
6. “ordering the employer to pay for the psychological support needed by the employee for a reasonable period of time determined by the Tribunal;” and
7. “ordering the modification of the disciplinary record of the employee.”

However, pursuant to section 123.16 of the *Act respecting labour standards*, “paragraphs 2, 4, and 6 do not apply [...] [when the person who was harassed has] an employment injury within the meaning of the *Act respecting industrial accidents and occupational diseases* that results from psychological harassment.”

## **RIGHT OF REFUSAL**

It has been recognized in case law that “health” within the meaning of the *Act respecting occupational health and safety* refers to both physical and psychological health. It is therefore possible, in theory, to exercise the right to refuse to perform work if the psychological harassment and violence are such that it is possible to show that the performance of the work leads to exposure to danger to the health, safety or physical integrity of individuals. An important concept involved in the right of refusal is “danger,” which should not be confused with the concept of “risk.”

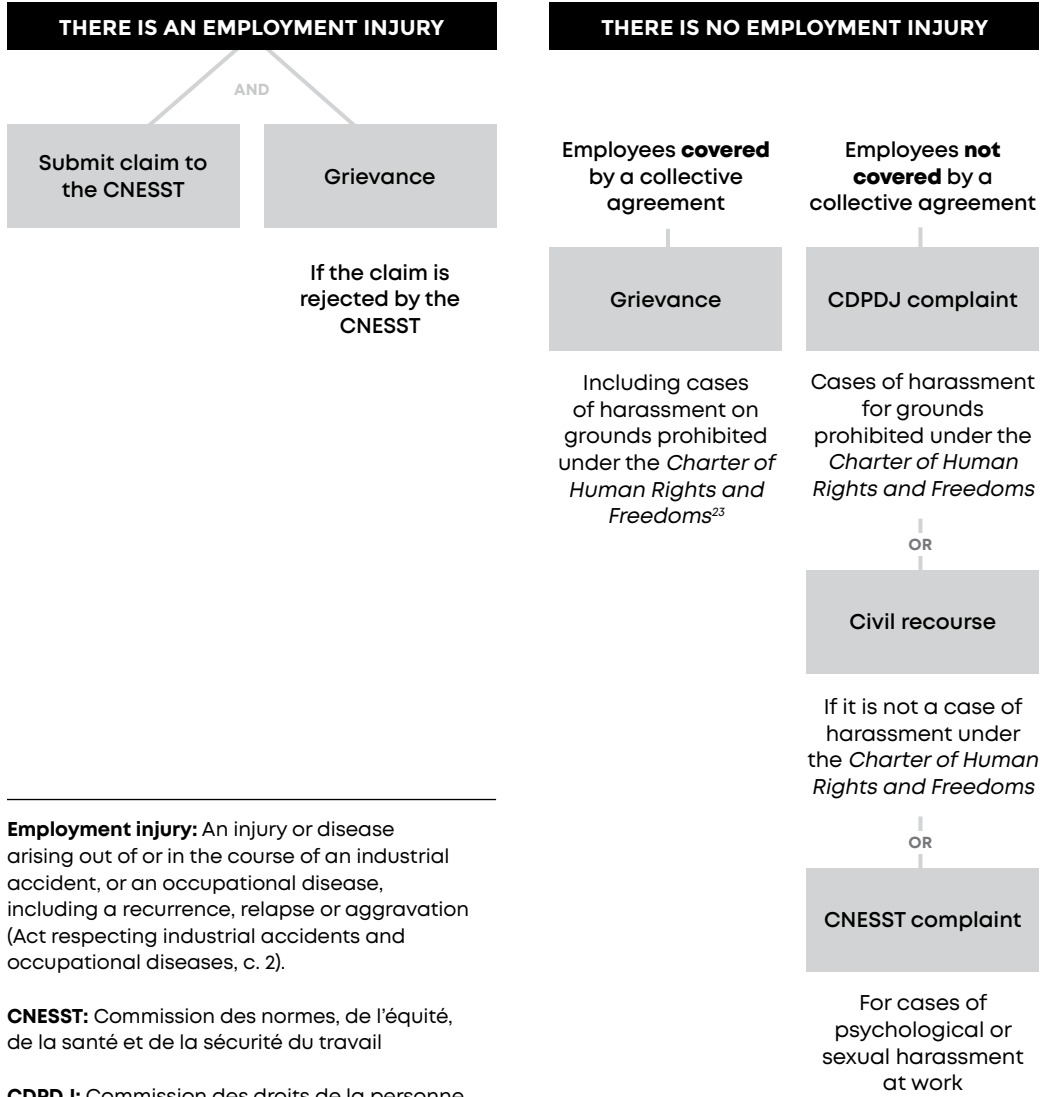
- Danger is more imminent than risk. It involves a real threat, while risk refers to an event that, while possible, is less certain. The threat must be more than potential and must consist of more than simple fear, concern, or apprehension.<sup>22</sup>

Section 12 of the *Act respecting occupational health and safety* states the following:

A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical well-being, or would expose another person to a similar danger.

The challenge of seeking this recourse lies in demonstrating that there is a real danger for psychological health and not a risk or fear.

## RECOURSE AGAINST THE EMPLOYER IN CASES OF PSYCHOLOGICAL HARASSMENT



**Employment injury:** An injury or disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation (Act respecting industrial accidents and occupational diseases, c. 2).

**CNESST:** Commission des normes, de l'équité, de la santé et de la sécurité du travail

**CDPDJ:** Commission des droits de la personne et des droits de la jeunesse



## PART 2





# Role of the Union and the Union Officer at Each Step of the Process



This section outlines the role of the union officers in charge of assisting those involved at each key step based on the most common situations. It also refers to various tools, such as forms and information sheets, which can be found in the appendices.

## What to do before intervening

Before intervening with a person who is alleging that he or she is experiencing violence or harassment at work or with a person being reported, union representatives must ask questions to determine their capacity and ability to intervene.

We are all at risk of allowing our bias to affect our thoughts, speech, and actions. When it comes to workplace violence and harassment, this is all the more true!

Before intervening, it is therefore necessary to reflect in order to determine our limits and identify, to the best of our ability, the various situations that could be problematic for us. Note that it may sometimes be necessary to decide that it is impossible for us to carry out the procedures with the persons involved.

We suggest using a [self-assessment grid](#) with the aim of allowing yourself to identify these problematic situations to the best of your ability. We suggest that you complete it as soon as possible and review it several times per year. If a given situation puts you off or bothers you, answer the questions again with the situation in mind.

Finally, we suggest that you share this personal reflection with the members of your executive committee and with the union advisers that assist you in carrying out your duties. It is also possible that training activities can allow you to become better prepared to handle these situations and, ultimately, to widen the scope of your intervention skills. By discussing this form with your union colleagues and your union adviser at the federation with which you are affiliated, you may find ways to handle these situations.

**Tool**—see APPENDIX 1: [Self-Assessment of My Ability to Intervene](#)

## **STEP 1** Reporting a problematic situation

### **PLANNING LOGISTICS FOR THE FIRST MEETING**

- Plan the meeting as soon as possible and make sure that you have enough time. Two and a half to three hours may be needed for the first meeting. Avoid distractions: put your phone on silent mode so that you are not distracted by sounds or notifications.
- Choose a location that is out of sight where individuals can express themselves without fear of being overheard.
- Make sure that you have all the required materials in place:
  - Materials needed for becoming aware of the situation and the information to be given to the person reporting the situation; and
  - Tissues and water, as the person may be emotional.

#### **INTERPERSONAL SKILLS**

As the person from the union providing assistance and managing this type of situation, feel free to refer to the following tool:

**Tool**—see APPENDIX 2: [The Role of the Person Providing Assistance—Personal Reflection Tool](#)

#### **USEFUL REMINDER**

Before the first meeting, we recommend that you provide the person reporting the situation with the information sheets that contain definitions and examples of problematic situations that could occur in the workplace. This information will allow the person to be better prepared and will make your work easier. You can then refer to them as needed during the meeting. These information sheets can be found in APPENDIX 8.

### **MEETING WITH THE PERSON REPORTING THE SITUATION**

The first section of this guide covered various situations that could occur in the workplace and serve as reasons to call on the union. constitute harassment, this is often not the case. A member may want information, to resolve a problematic situation, to inform the union about major tension between two colleagues, or to file a complaint.

## INTERPERSONAL SKILLS

No matter the situations in question, they all share a commonality: the heavy emotional load for those involved. It is therefore highly important not only to ensure that the process does not unduly increase this load, but also to make sure that it reduces it. This concern guides our actions. Listening, providing information, and assisting individuals at all steps of the process will help achieve this objective.

- Special attention must be given to the terminology used, since some words can be charged with meaning.
  - **Note:** The use of the term “problematic situation” allows for referring to various situations (conflict, incivility, violence, or harassment) that may be encountered without putting a label on them too early, one which could prove unfounded. This way, false hope is not given to the person reporting the situation by talking about harassment from the start. This also prevents prematurely labelling the person being reported. Until we are certain of the type of situation being brought to our attention, it is vastly preferable to use the term “problematic situation,” both with those directly involved and, as applicable, with the witness who reported the situation.
  - Good listening skills are paramount. Attentive listening without judgment will allow individuals to describe situations more easily. Keep in mind that it is difficult to describe a situation involving violence and, in particular, a situation involving harassment. Harassment consists of a series of events that seem harmless when viewed separately, and telling someone about such harassment can be painful. Those experiencing problematic situations may feel like they are complaining for nothing. They will therefore be very sensitive to non-verbal messages that could reinforce this feeling or that make them feel as though the situation is not being taken seriously.
  - Recognition of the painful nature of reported situations and the emotions or consequences that result would be beneficial for such individuals. It would also give them confidence and, as a result, facilitate the provision of assistance on the part of the union.

### USEFUL REMINDER

At this step of the process, the person reporting the situation is given an opportunity to talk about the situation and be listened to, to receive information about various methods available to resolve the dispute, and to be supported.

**If it has not been done in advance**, give the person the information sheets at the beginning of the meeting. This will allow the person to refer to them as needed during or after the meeting and will be reassuring for the person.

## BECOMING AWARE OF THE PROBLEMATIC SITUATION

This involves asking the person who is reporting the problematic situation to describe it. It is necessary to know the sequence of events and to understand how the situation deteriorated. This is also an opportunity for those reporting such situations to discuss their needs and possible solutions.

### EXPERTISE

- Ask the person who is reporting the situation to describe the facts of the various events that occurred. You will find a form that facilitates describing the facts in APPENDIX 3.
  - Use the following questions as suggested in the form to bring the facts to light: When? Where? Who? What?  
**Tool**—see APPENDIX 3: Problematic Situation Report Form
- Explain that those who experience problematic situations have the “burden of proof” and what that means. The burden of proof is the obligation to show on the basis of facts that they experienced what they are alleging—violence or harassment, as applicable.
- Take clear and precise notes, pay special attention to anything related to the facts, and distinguish between facts and perceptions. These notes will be useful for you when you follow up on the situation or in the event of a potential grievance.
  - Beware of statements that seem to be truths, e.g., “He’s out to get me, and he intentionally does things to hurt me.”
  - Use reformulation to ensure that you have correctly understood what the person wanted to say. Reformulating is saying the same thing in a different way to allow the person to distinguish between facts and personal opinions and judgments they may have that can blur the lines in relation to the situation.
  - Ask the person questions. With the example above, you can ask the person what makes him think that the other person is out to get him, i.e. what are the facts that make him think this.  
**Tool**—see APPENDIX 4: Making a Distinction Between Facts and Perceptions
- Determine whether organizational risk factors are present that could contribute to the problematic situation. You can use the risk factor information sheet to discuss working conditions.  
**Tool**—see INFORMATION SHEET 2 in APPENDIX 8 Organizational Risk Factors  
**Tool**—see APPENDIX 5 Analysis Grid of Risk Factors for Conflict, Incivility, Violence, or Harassment at Work

**Q What do you do if the person reporting the situation is not one of the people directly involved in the problematic situation?**

- Proceed in the same way as that stated in the “Becoming aware of the problematic situation” step.
- It will also be important to ask the person to state the facts that relate to the events that the person witnessed and that led the person to believe the situation was problematic.
- You must contact the person who experienced the problematic situation to share the facts brought to your attention.
- You must then obtain said person’s version of the facts and permission to proceed with the next steps.

**Q What do you do if the person who is experiencing the problematic situation does not want the situation to be dealt with?**

- Try to learn why the person is refusing; it is highly likely that the person fears the consequences of reporting the situation.
- Try to reassure the person and clarify the person’s rights (healthy workplace) and the fact that you are there to provide assistance throughout the process.
- Tell the person that, given the employer’s obligations to prevent psychological harassment and provide a healthy workplace, it would be vastly preferable to use the various means available to put an end to the situation.
- Give the person time to take a step back and think with a clear mind.

**INTERPERSONAL SKILLS**

How welcoming you are and your listening skills will be very important during the first meeting. Those who come to the union in this type of situation are often anxious and are afraid that the situation will get worse if they talk, that they may seem too sensitive, that they will not be believed, etc. They are often very emotional and in a highly vulnerable state. When you first meet with the person experiencing the problematic situation, it is very likely that emotions will run high.

When the person who is experiencing the problematic situation is not the person who reported it, the person experiencing the situation may fear that things may become worse and may be tempted to deny the situation or show anger at the person who reported it.

It is therefore very important to

- listen without judgment;
- adopt an attitude that shows that you understand the difficulty of the situation and that you are taking it seriously; and

- mention that it is normal to fear that the situation may become worse, but specify that, in general, people feel relief after taking steps to resolve the problem. If nothing is done, there is a very good chance that the problematic situation will continue or become even worse.

#### **CONFIDENTIALITY**

Harassment, violence, and conflict situations in the workplace must be handled in a confidential manner. This means that the only people informed are those being reported, those who may shed light on the situation as it is being handled, and those who can take corrective action in relation to the situation. These individuals are bound by confidentiality during and after the process for handling the situation.

Various confidentiality issues will be discussed in the information sheets and in more detail in the investigation guide.

#### **ASSISTING AND SUPPORTING THE PERSON EXPERIENCING A PROBLEMATIC SITUATION**

Those who report and experience the situation must be informed of their rights, of the complaint process provided for in the establishment's or business's prevention policy, of the various means available to them to resolve the dispute, and of the steps to take.

#### **EXPERTISE**

- Provide general information about human rights and the different types of available recourse in matters of violence and harassment at work. Refer to APPENDIX 8—INFORMATION SHEETS to see the sheets that contain all of the information to be provided.
  - Tool**—see INFORMATION SHEET 4 in APPENDIX 8: [Rights and Obligations in Matters of Violence or Harassment at Work](#)
  - Tool**—see INFORMATION SHEET 6 in APPENDIX 8: [Recourse in Matters of Violence or Harassment at Work](#)
- When a person is ill because of the situation at work (employment injury) or as soon as a person must stop work temporarily, take medication, or consult with a health care professional, such as a psychologist, an application for indemnities must be quickly submitted to the CNESST (the deadline to file is six months).
- Inform the person experiencing the problematic situation that various means of managing disputes could allow for resolving the situation.

- Some situations can be resolved quickly without filing an official complaint. Sometimes, asking the person being reported to put an end to the behaviour allows such a person to become aware of the impact of the behaviour and leads the person to put a stop to it. Apologies can also allow for resolving the situation while providing the person experiencing the problematic situation with some acknowledgement.

**Tool**—see INFORMATION SHEET 5 in APPENDIX 8: Methods for Managing Disputes

- Provide information about the psychological and sexual harassment prevention policy and on the methods of handling complaints in your workplace. Point out the various options available in the policy to resolve the situation.

**Tool**—Refer to the policy in force in your workplace.

- Provide information about the support mechanisms available based on the reality of your workplace.
  - Direct the person to specialized assistance from health care professionals or to the employee assistance program (EAP).
  - You can also refer them to colleagues in the support network. For more information on assistance/support networks, see the guide in the For a Workplace Free From Violence and Harassment prevention kit.
  - You can also go to the CSN web page on support networks that contains, among other things, various support resources. You can also learn more about support networks and about the resources that can help you establish a support network.
- In cases of sexual harassment or violence, tell the person experiencing the situation that there is the possibility of asking that the case be handled by a woman or person of the same sex.
  - If needed, you can direct the person to expert groups like the Centres d'aide et de lutte contre les agressions à caractère sexuel (CALACS).
- **Situation with serious risks:** In situations in which the facts present a serious risk to the safety or reputation of either party or if contact between the parties makes the workplace unsafe, it may be necessary to implement temporary measures. It would thus be best to call on and notify the employer of the facts that make it seem necessary to implement such measures, which must then be negotiated with the employer. If there is a real danger, a right to refuse to work pursuant to section 12 of the *Act respecting occupational health and safety* will need to be considered.
- **Reminder:** The implementation of temporary measures does not constitute acknowledgement of the harassment situation. The difference must be explained to the person reporting the situation in order to manage the person's expectations. They are temporary, preventative measures.
- Before implementing a temporary measure, it is important to ensure that the person experiencing the situation has given consent. The measures should not have the effect of punishing the person (see the concept of protection against reprisals for exercising a right in article 122 of the *Act respecting labour standards*,

article 227 of the *Act respecting occupational health and safety*, and article 32 of the *Act respecting industrial accidents and occupational diseases*, for those who applied for indemnities with the CNESST).

- Examples of temporary measures:
  - Arrangements to temporarily keep those directly involved apart
  - Modification of work schedules
  - Temporary transfer to other duties (temporary assignment)
  - Change of supervisor
  - Etc.

#### **INTERPERSONAL SKILLS**

- Respect the pace and emotional state of the person.
- Be attentive to signs that the person does not understand.
- Reassure the person with the following reminders:
  - There are aspects of the situation that the person can have control over.<sup>24</sup>
  - There are information sheets that the person can consult as needed. They contain all of the elements you will talk to the person about.
  - It is okay if the person does not remember everything you say: the person can look at the sheets after the meeting.
  - The person can write down questions and ask you the questions at a future meeting.
  - The person is the one who chooses the means to resolve the situation (alternative means or official complaint). The person can take all the time needed to think with a clear head and decide what means to take to resolve the situation.
- Provide necessary clarification. With mediation, for example, even if the person chooses this method, the person being reported must agree to participate. Mediation works when the people involved take part voluntarily and think that it can allow them to resolve the situation. If that is not the case, success is much less certain.
- State that you are there to assist the person throughout the process.

Naturally, you may also be called on to accompany a person to certain meetings, whether or not they relate to the situation, on behalf of the union. Some examples include a meeting with the person's immediate supervisor in order for said supervisor to become aware of the situation or to discuss potential solutions, or during questioning in the investigation process of the employer or the union.

- During the meeting, take notes that are as accurate as possible. They may be useful to you when following up with the situation. Note any outstanding issues, follow-ups that need to be done, etc.
- It may be relevant to review what happened during the meeting with the person to answer the person's questions, provide warnings, etc. It is also recommended



that you complete your notes to ensure that you have all of the necessary information when you need to go back to them.

- If a scheduling conflict prevents you from speaking with the person immediately after the meeting, quickly pick a time to do so. Recommend that the person write down any questions.

#### **IMPORTANT REMINDER**

It is important not to lose sight of the fact that while it is ideal to resolve these situations through alternative means of managing disputes, it is essential to ensure that the recourse of the person experiencing the problematic situation remains available. We recommend filing a grievance as soon as possible. It can always be withdrawn if there are no grounds for the grievance or if a satisfactory agreement is reached.

When the person must take medication or consult with a health care professional or when the person has an illness related to this problematic situation (and not due to a difficult situation experienced outside of work), the person may be advised to file a claim with the CNESST for indemnities. If an employee requires care, it is useful to file a claim with the CNESST, even if the employee does not have to stop working.

## **STEP 2** Investigating the reported situation

A union investigation allows for shedding light on the situation and meeting the requirements of the duty of representation ascribed to the union in section 47.2 of the *Labour Code* by drawing on orientations specified in case law.

In fact, the *Labour Code* provides the union with a monopoly on representation. This then goes hand in hand with the duty of fair representation. Such representation must be “genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee”.<sup>25</sup>

It goes without saying that a thorough investigation is essential in matters of psychological harassment, which most of the time involve several individuals in the same bargaining unit who are, in one way or another, emotionally affected by the situation.

This investigation will be useful for you in order to separate facts from perceptions. Your interventions will also be more effective because you will have been able to properly identify the sources of the issues and to resolve them.

Moreover, sensitive decisions that you will have to make will be well-documented, which will allow you to identify the facts upon which you based your decisions if an employee decides to file a complaint against the union under sections 47.2 and 47.3 of the *Labour Code*.<sup>26</sup>

Under section 47.2 of the *Labour Code*:

A certified association shall not act in bad faith or in an arbitrary or discriminatory manner or show serious negligence in respect of employees comprised in a bargaining unit represented by it, whether or not they are members.

In the Noël decision,<sup>27</sup> the Supreme Court of Canada defined four types of conduct (i.e. bad faith, discrimination, arbitrary conduct, and serious negligence) in the following ways:

- **Bad faith:** “presumes intent to harm or malicious, fraudulent, spiteful or hostile conduct”.
- **Discrimination:** “any attempt to put an individual or group at a disadvantage where this is not justified by the labour relations situation in the company.”
- **Arbitrary conduct:** “even where there is no intent to harm, the union may not process an employee’s complaint in a superficial or careless manner. It must investigate the complaint, review the relevant facts or seek whatever advice may be necessary”.
- **Serious negligence:** “A gross error in processing a grievance may be regarded as serious negligence despite the absence of intent to harm. However, mere incompetence in processing the case will not breach the duty of representation, since s. 47.2 [of the *Labour Code*] does not impose perfection”.

Based on the facts that were reported to you, it is necessary to determine the type of situation. It is therefore important to quickly begin an investigation to assess whether all of the facts are in line with the definition of psychological harassment or if another type of situation is clearly taking place. This first step allows for determining

- if the situation meets the five criteria in the definition of psychological or sexual harassment or if it involves vexatious behaviour; and
- the type of intervention that could allow for resolving the situation quickly to minimize the impacts on those directly involved. A number of situations reported as being harassment are in fact situations that involve conflict,

incivility, or issues related to work organization, which are not handled in the same way as situations involving psychological or sexual harassment. It is therefore crucial to begin the investigation quickly in order to develop a good understanding of the nature of the situation and to better guide actions.

#### INTERPERSONAL SKILLS

- The first step is to analyze the facts gathered when the situation is reported to determine if it meets the five criteria in the definition of psychological harassment. It is important to remember the following:
  - The five criteria in the definition are behaviour that is 1) vexatious, 2) repeated, 3) hostile or unwanted, 4) affects dignity or physical or psychological integrity, and 5) results in a harmful work environment.
  - A single serious incident may also constitute harassment if it affects the employee's dignity or physical or psychological integrity and has a lasting harmful effect.
  - The situation that you are trying to map out may not reflect reality. You will find out more when the version of the person being reported is taken into consideration. For example, you may find, after learning the version of the facts of the person being reported, that the situation of alleged harassment is in fact a conflict between two individuals.
- The two tools that follow will help you with this step. The first will give you benchmarks to guide you in your analysis. The second will allow you to evaluate, using an analysis grid, the five criteria found in the definition in section 81.18 of the *Act respecting labour standards*. If needed, refer to the [definitions](#) presented in Part 1.

**Tool**—see APPENDIX 6: [Benchmarks](#)

**Tool**—see APPENDIX 7: [Grid for Analyzing the Admissibility of a Psychological Harassment Complaint](#)



### IMPORTANT REMINDER BEFORE GOING FURTHER

It is important not to lose sight that legislation such as the *Act respecting occupational health and safety* and the *Act respecting labour standards*, as well as the amendments made to the *Canada Labour Code*, are aimed, in particular, at preventing risk situations and ensuring a healthy workplace. More specifically, section 81.19 of the *Act respecting labour standards* requires that the employer prevent and puts a stop to psychological harassment.

This means that the employer is obligated to intervene in the following situations:

- In situations that may degenerate into harassment, such as conflicts that go unmanaged.
- In situations that, at the time they are analyzed, do not meet the five criteria in section 81.18 of the *Act respecting labour standards*.
- In situations that involve risk factors for violence or psychological harassment.

**Tool**—See INFORMATION SHEET 2 in Appendix 8, [Organizational Risk Factors](#)

**Tool**—See APPENDIX 5, [Analysis Grid of Risk Factors for Conflict, Incivility, Violence or Harassment at Work](#)

It is also important to keep in mind that the objective of the interventions is to quickly resolve the problematic situation. The preferred way to do so should be that which has the fewest negative consequences for those involved. That is why, alternative approaches for managing disputes, such as conflict management or mediation, are first suggested. However, it is important to remember that those involved choose the method to use.

### THE ROLE OF THE UNION:

- The union must inform those directly involved in the situation that these alternative methods exist, explain their advantages to them, and ensure that they can use them if they wish to do so.
- The union must ensure that the employer fulfills its obligations, which were discussed in Part 1.
- The role of the union is to always provide its members with the possibility of going through the grievance process, using the recourse provided for in the *Act respecting occupational health and safety* and the *Act respecting industrial accidents and occupational diseases* (or other applicable legislation), or pursuing any other recourse before the courts.

## **MEETING WITH THE PERSON BEING REPORTED**

When those being reported are members of the union, they must also be assisted, represented, and supported by the union. The union representative assisting the person being reported should not be the same one who is assisting the person experiencing the problematic situation.

Different situations can also lead the person being reported to contact the union. The following are some examples:

- If the person is called on by the person reporting the situation to stop the behaviour.
- If the person is called on by the contact person to try to put an end to the dispute by means of an informal method.
- If the person is contacted in the context of a psychological harassment investigation conducted by the employer to provide the person's version of the facts.
- If the person was subject to a disciplinary measure following the completion of the investigation by the employer.

In all such situations, the person being reported needs to be supported and reassured. As was the case for the person reporting the situation, how welcoming you are and your listening skills will be very important during the first meeting. Those being reported are often anxious and sometimes in shock because they do not always understand why they find themselves in this type of situation. They may also feel guilty and may fear being labelled as violent, harassing, etc. They are often in a vulnerable state. It is thus important to proceed with caution, especially when there are allegations of harassment, since a summary analysis may find that the situation is a conflict with no trace of vexatious behaviour.

## **OBTAINING ITS VERSION**

The person being reported must be able to give said person's version of the facts about all relevant elements related to the situation, based on the allegations. This will allow you to, among other things, gain a better idea of the type of situation.

Union representatives for the two parties are thus required to put together the versions of the facts of each of the individuals involved in order to get a clearer picture of the situation and of the type of intervention that could put an end to the problematic situation.

## EXPERTISE

- First, ask individuals how they feel in relation to the situation. It will allow you to understand how they are living with being called out in this way (their emotions) and how they are managing such emotions. It is also recommended that you ask them if they have any questions or concerns so that you can address them.
- Next, go over the allegations one by one and ask about their version of the facts for each of them. If needed, assist them by asking questions about the context in which the situation took place.
- Mention to individuals being reported that the burden of proof is on the person who reported the situation. It is therefore that person who must prove, using facts, that violence or harassment occurred.
- Take clear and precise notes, especially about anything related to the facts, and distinguish between facts and perceptions. These notes will be useful for you when following up or to support a possible grievance to contest a penalty that is disproportionate to the misconduct.
  - Beware of statements that seem to be truths. Example: “She’s upset with me, and she’s only doing this to get me into trouble.”
  - Use reformulation to ensure that you have correctly understood what the person wanted to say. Reformulating is saying the same thing in a different way to allow individuals to distinguish between facts and personal opinions, and to make them aware of judgments they may have that can blur the lines in relation to the situation.
  - Ask them questions. For example, ask them to state the facts that make them feel that the person is upset with them.

**Tool**—see APPENDIX 4: [Making a Distinction Between Facts and Perceptions](#)

- Identify organizational risk factors that are present that could contribute to the problematic situation. This can be very useful if the person being reported is subject to disciplinary action imposed by the employer or if the employer, who is aware of the situation, does not intervene. The presence of risk factors can also serve to reduce the penalty based on the situation in question. You can use the risk-factor information sheet to discuss working conditions.

**Tool**—see INFORMATION SHEET 2 in Appendix 8: [Organizational Risk Factors](#)

**Tool**—see APPENDIX 5: [Analysis Grid of Risk Factors for Conflict, Violence or Harassment at Work](#)

## INTERPERSONAL SKILLS

As indicated in the section on meeting with the person reporting the situation, it is very important not only to ensure that the process does not unduly increase the emotional burden related to this type of situation, but also to make sure that it reduces it.

- The listening skills of the union representative will also play a crucial role. Attentive listening without judgment will allow individuals to describe their version of the facts more easily. It is important to keep in mind that it is never pleasant to be reported for a situation involving conflict or incivility, and even less so for situations involving violence or harassment. The person being reported will therefore be sensitive to non-verbal messages that may make he or she feel as though he or she is being judged in advance.
  - Give the person a moment at the beginning of the meeting to “vent” and express emotions. This will allow the person to be in better spirits for the rest of the meeting. Even if it feels as though you are wasting time, you will benefit from it for the rest of the process, since you will have created a climate of trust by listening to them. It should also allow individuals being reported to feel that no matter the situation they are in, you are there to assist them, represent them, listen to them, and be respectful of them.
  - Recognizing the painful nature of reported situations and the emotions or consequences that result would be beneficial for the person. It could also make the person feel like you can be trusted and, as a result, facilitate the provision of assistance on the part of the union.
  - Tell the person that until the analysis of the situation that includes the person’s version of the facts is conducted, no assumptions are made about the type of situation and no judgment is passed.
- Special attention must be given to the terminology used, since some words can be charged with meaning.
  - The use of the term “problematic situation” allows for referring to various situations (conflict, incivility, violence, or harassment) that may be encountered without putting a label on them too early, one which could prove unfounded. Being thought of as responsible for a situation of violence or harassment when this is not the case comes with a very heavy and difficult emotional burden. Until we know the exact nature of the situation that has been brought to our attention, it is by far preferable to use the term “problematic situation.”

## PROVIDING ASSISTANCE AND SUPPORT

From the first meeting with those being reported, they must be informed of their rights, of the complaint process provided for in the establishment's or business's prevention policy, of the various means available to them to resolve the dispute, and of the steps to take. If, due to a lack of time, it is not possible to discuss all of these subjects with the person, mention them briefly and state that they will be the subject of a second meeting. We recommend, however, that you do not wait to provide the person with the relevant information sheets so that the person in question can consult them.

### EXPERTISE

- Provide the person with general information about the person's rights, obligations, and the different types of recourse available in matters of violence and harassment at work. Refer to Appendix 8, which contains information sheets that you can give to the person.  
**Tool**—see INFORMATION SHEET 4 in APPENDIX 8: [Rights and Obligations in Matters of Violence or Harassment at Work](#)  
**Tool**—see INFORMATION SHEET 6 in APPENDIX 8: [Recourse in Matters of Violence or Harassment at Work](#)
- Inform the person being reported, based on how the situation develops, that various means of managing disputes could allow for resolving the problematic situation.
  - The person who reported the situation may have alleged that harassment was experienced, but after an analysis of the situation, you may find that it is in fact a case of a conflict between two individuals. In this case, the situation may be able to be resolved using a method for managing disputes.
  - Some situations can be resolved without the filing of an official complaint. Sometimes, certain individuals are not aware of the repercussions of their verbal comments or gestures. Simply asking them to stop the disruptive behaviour helps them become aware of its impact and encourages them to put a stop to it. Apologies can also allow for quickly resolving the situation while providing the person experiencing the situation with some acknowledgement.  
**Tool**—see INFORMATION SHEET 5 in APPENDIX 8: [Methods for Managing Disputes](#)
- Provide information about the psychological and sexual harassment prevention policy and on the methods of handling complaints in your workplace. Point out the various options available in the policy to resolve the situation and, as applicable, the option chosen by the person who reported the situation.  
**Tool**—Refer to the policy in force in your workplace.
- Provide information about the support mechanisms available based on the reality of your workplace.
  - You can direct the person to specialized assistance from health care professionals or to the employee assistance program (EAP).



- You can also refer the person to colleagues in the assistance/support network. For more information on assistance/support networks, see the guide in the [For a Workplace Free From Violence and Harassment prevention kit](#).
- Go to the [CSN web page](#) on support networks, which contains, among other things, various support resources. You can also learn more about support networks and resources that you can make use of to help you establish a support network.

#### INTERPERSONAL SKILLS

- Be an attentive listener.
- Show the person being reported that you understand and are not passing judgment.
- Tell the person that you are there to provide assistance and representation and that the person should feel free to ask questions and share situations about which the person is concerned.

#### Confidentiality

The same rules of confidentiality discussed for the person reporting the situation apply to the person being reported.

### STEP 3 Determining what actions the union must take

In the preamble, we mentioned that the suggested sequence of interventions in this guide is inspired by that found in the *For a Healthy Work Environment Free From Violence and Harassment prevention kit*. We recommend, as a first step, to suggest that those directly involved resolve problematic situations using interventions that involve methods of managing disputes, without forgetting to engage in legal recourse at the same time. A number of situations can be resolved in an informal manner that is satisfactory to those concerned. In situations in which work organization is at issue, an appropriate intervention on the part of management will allow for quickly and effectively resolving problematic situations. For situations of conflict or harassment, a method for managing disputes may allow those involved to find solutions that are mutually satisfactory and to improve their future communications.

These informal interventions should thus be considered even if a grievance is filed. The aim of this type of intervention is to reduce the negative impacts associated with the process on those directly involved and to put an end to the problematic situation as quickly as possible. The fewer people who are aware of the process and the more the process is focused on solutions, the less onerous the process will be for those involved in the problematic situation.

We are well aware that so-called informal interventions are not always appropriate or accepted by those directly involved or that how the situation is handled does not always fully satisfy them.

We will present different types of problematic situations that may occur and actions that can be taken that allow for resolving them.

## **SITUATIONS INVOLVING MANAGEMENT RIGHTS AND WORK ORGANIZATION**

Situations involving management rights that present facts that leave no doubt as to the presence of harassment must be handled by the immediate supervisor. The information sheets will be useful for members to make a distinction between facts and perceptions and between what constitutes harassment and what does not. A meeting with the manager in the presence of the union representative may allow for clarifying the situation and ensuring that the member, if needed, will have the possibility of benefiting from measures that will allow the member to perform work in an adequate manner (training on a particular aspect of the job, clarification of roles, etc.).

In the same manner, situations that involve work organization and that have an impact on health and social relationships at work, such as difficult working conditions, work overload, ill-defined roles, lack of communication, lack of training or support following technological changes, or unsuitable or insufficient tools or equipment, must be reported to the immediate supervisor who will be able to take action with regard to such organizational risk factors.

- For example, a situation that occurs frequently is a disagreement in relation to ambiguous duties or roles between two colleagues. This situation does not require the same type of intervention as a situation that meets the five criteria for psychological harassment. As a result, it would be appropriate to call on the immediate supervisor, who would thus become aware of the situation and clarify the roles and responsibilities of the two individuals involved. Moreover, the supervisor should determine if this ambiguity related to the roles of the members of the team may occur between other employees on the same team. Where appropriate, the duties and roles can be clarified for all members of the team, which will have the effect of eliminating some ambiguous situations and preventing possible problematic cases.

These various risk situations may cause stress for workers, but do not, in themselves, constitute harassment. The risk factor grid allows for identifying and documenting the presence of these factors. The union plays a monitoring role and must ensure that the employer is fulfilling its obligation to prevent harassment by addressing the risks that are present.

## **SITUATIONS OF CONFLICT OR INCIVILITY**

Situations of incivility and conflict share some characteristics:

- They have a negative impact on the work climate;
- They have the potential of deteriorating and shifting toward becoming situations involving harassment if they are not handled.

The employer is therefore required to intervene in both cases. It would benefit from conducting a summary investigation and, based on the result,

- intervene by providing reminders about civility;
- offer a method for managing disputes such as conflict management; or
- offer measures to support those involved.

Conducting an intervention to repair relationships on the team may also be necessary.

Very often, organizational risk factors are the cause of conflict situations. Examples include work overload and inadequate or insufficient equipment. The employer must take action to address these risks and prevent psychological harassment.

### **THE ROLE OF THE UNION:**

- The union ensures that the employer fulfills its obligations by taking reasonable measures to prevent harassment.
- The union reports the presence of situations or risk factors and reminds the employer of its obligation to prevent harassment as well as of its general obligation for prevention pursuant to section 51 of the *Act respecting occupational health and safety* and the *Act respecting labour standards*. Businesses and organizations under federal jurisdiction can invoke section 8 of the new *Work Place Harassment and Violence Prevention Regulations*, which come into force on January 1, 2021.

## **SITUATIONS INVOLVING VEXATIOUS BEHAVIOUR THAT DO NOT MEET THE CRITERION OF REPEATED BEHAVIOUR**

Some situations involve vexatious behaviour, but do not meet the definition of harassment, because the behaviour is not repeated or because the situation does not meet the criterion of serious behaviour.<sup>28</sup> In some situations, the employer is also obligated to intervene to prevent psychological harassment and put a stop to vexatious behaviour.

- A method of managing disputes can be suggested to try to put a stop to the vexatious behaviour.

- Once again, special attention must be paid to situations or risk factors that are present. Such situations between two individuals are susceptible to affect a team's work climate. This could especially be the case on a small work team.
- INFORMATION SHEET 2 in APPENDIX 8, Organizational Risk Factors, as well as APPENDIX 5, Analysis Grid of Risk Factors, will allow you to identify such risk situations and come up with potential solutions.
- Follow-up must be carried out to ensure the behaviour has been stopped. If it has not, the employer must take reasonable measures to put a stop to it.

#### **THE ROLE OF THE UNION:**

The union must ensure that the employer fulfills its obligations and that it takes action aimed at prevention to avoid having the repetition criterion be fulfilled a few weeks or months later and to put an end to the vexatious behaviour. In cases in which the measures taken by the employer are not sufficient or entirely non-existent, a grievance against the employer for failing in its duty to provide a safe and healthy workplace that does not undermine the dignity, health, and safety of workers should be filed.

#### **SITUATIONS OF VIOLENCE OR PSYCHOLOGICAL HARASSMENT**

In situations of violence or psychological harassment, the employer has the obligation to take reasonable measures to put an end to this conduct. Methods can vary by situation, but within the range of measures considered, the employer must think about

- conducting an investigation;
- assessing whether transitional measures must be implemented to ensure a safe and healthy workplace for the person reporting the situation, for the person experiencing the problematic situation (if not the same person as the one who reported it), and for all staff;
- offering methods for managing disputes, such as mediation, to those involved in the problematic situation, in order to quickly put a stop to the situation and prevent it from escalating.
  - It is important to keep in mind that informal methods are not always appropriate. In cases of severe violence or serious harassment, calling on the person being reported may put the victim's safety at risk. In such situations, transitional measures may be necessary and should be evaluated on a case-by-case basis. Moreover, serious cases involving psychological or sexual harassment, as well as situations involving physical aggression and sexual assault are not a good fit for alternative methods of managing disputes;
- taking action with regard to organizational risk factors that have been identified in order to prevent or put a stop to harassment;
- making support measures available to those directly involved in the situation, as well as to witnesses; and

- implementing various measures to facilitate the return to work, such as training, temporary changes to workload or duties, reimbursement of lost wages during absence, or reimbursement of health professional consultation fees.

**THE ROLE OF THE UNION:**

- The union must ensure that the employer fulfills its obligations.
- When there is an employment injury, the victim must apply for indemnities with the CNESST and must be assisted in this process by a union representative.
- The rights of the victim must be protected by filing a grievance.
  - The union will conduct an investigation to carry out its own analysis of the situation.

**TABLE 1** summarizes the actions to take based on the various situations you encounter, as well as the interventions that can help resolve a situation.

**RECOMMENDATION**

We strongly recommend that you validate your analysis with your union adviser and confirm the actions to take based on the characteristics of the problematic situation that you are handling.

If you work for a business or organization under federal jurisdiction or a business or organization under provincial jurisdiction, but outside of Quebec, it is all the more important to go through this step with your union adviser since the legislation differs and deadlines for some forms of recourse are not the same as those in the *Act respecting labour standards* and the *Act respecting industrial accidents and occupational diseases*.

**TABLE I**

**Actions to take based on the situations encountered**

While the information in this table has been summarized to give you an overview of what can be done, it is important to remember that the legislative intent behind section 81.19 of the Act *respecting labour standards* remains and applies, no matter the situation. As such,

- Every employee has a right to a work environment free from psychological and sexual harassment.
- The employer must take reasonable measures to prevent psychological and sexual harassment and to put a stop to such behaviour.

TYPE OF SITUATION	ACTION TO TAKE
<p><b>Management rights situations</b> (management of performance, absenteeism, assignment of work, etc.)</p> <p><b>Work organization situations</b> (work overload, lack of communication, poorly defined duties or roles, etc.)</p>	<ul style="list-style-type: none"> <li>• It will be in the interests of the employer to shed light on the problematic situation and take the necessary corrective measures.</li> <li>• The employer must take action aimed at prevention in order to identify risks<sup>29</sup> and take the necessary corrective measures.</li> </ul> <p>In both types of situations, the union must ensure that the employer is fulfilling its obligation to prevent harassment by addressing risks.</p>
<p><b>Incivility or conflict</b></p>	<ul style="list-style-type: none"> <li>• The employer must take reasonable measures to prevent psychological harassment.</li> <li>• It is in the employer’s interest to monitor the situation closely, and as applicable, it may               <ul style="list-style-type: none"> <li>– intervene by providing reminders about civility; or</li> <li>– offer a method for managing disputes such as mediation or conflict management.</li> </ul> </li> </ul> <p>The union must ensure that the employer intervenes and fulfills its obligations.</p>



TYPE OF SITUATION	ACTION TO TAKE
<p><b>Situations involving vexatious behaviour</b> that do not meet the criterion of repeated or serious behaviour</p>	<ul style="list-style-type: none"> <li>◦ The employer must provide a workplace that is free of harassment and take reasonable action to prevent and put a stop to vexatious behaviour.</li> </ul> <p>The union must ensure that the employer fulfills its obligation to prevent situations of harassment by intervening to put an end to the vexatious behaviour.</p> <p>A grievance according to which the employer failed in its duty to provide a safe and healthy workplace that does not undermine the dignity, health, and safety of workers should be filed.</p>
<p><b>Violence</b></p> <p><b>Psychological or sexual harassment</b> (the five criteria in the <i>Act respecting labour standards</i> are present)</p>	<p>The employer is obligated to take reasonable measures to prevent and put an end to psychological harassment.</p> <ul style="list-style-type: none"> <li>◦ The employer’s policy must contain a mechanism for processing complaints that allows for managing disputes.</li> <li>◦ If such mechanisms are refused or fail, the employer must <ul style="list-style-type: none"> <li>– ensure that a thorough investigation is conducted to determine if harassment has taken place;</li> <li>– implement prevention measures or take action to put a stop to the harassment;</li> <li>– address organizational risk factors to prevent or put a stop to the problematic situation, whether it consists of harassment or not.</li> </ul> </li> <li>◦ The union must ensure that the employer fulfills its obligations.</li> <li>◦ When there is an employment injury, the victim must apply for indemnities with the CNESST within a period of six months<sup>30</sup> It is up to the union to assist the employee with this step.</li> <li>◦ A grievance must be filed to protect the rights of the victim. <ul style="list-style-type: none"> <li>– The union will conduct an investigation to carry out its own analysis of the situation and fulfill its duty of representation.</li> </ul> </li> </ul>

**STEP 4**

## Determining whether to proceed with the union investigation

In all situations that meet the five criteria in the definition of psychological harassment or that present or seem to present with vexatious behaviour, a union investigation must be proceeded with. All of the witnesses named by those directly involved must be met with when at least one of the following situations has occurred:

- methods for managing disputes have failed or if they were refused or not appropriate and a formal complaint has been made;
- the person reporting the situation who is directly involved in it is not satisfied with how the situation was handled by the employer; or
- the person who is being reported is a member of the union.

**It is important to remember that in this type of situation, caution should be exercised. As soon as you have doubts about the nature of the situation or if, after analysis, the situation appears to involve harassment or vexatious behaviour,** it is recommended that you act prudently and proceed with a union investigation if the methods of managing disputes between those directly involved have failed, if they were refused, if they are not appropriate, or if the aggrieved person is not satisfied with how the employer handled the situation. We again recommend that you consult with your union adviser to receive advice.

The role of the union is to provide its members with the possibility of going through the grievance process, using the mechanisms provided for in the *Act respecting occupational health and safety* and the *Act respecting industrial accidents and occupational diseases*, or pursuing any other recourse before the courts.

Note that a full guide is available about union investigations.



## **STEP 5** Determining the validity of the grievance

Given the complexity of situations involving violence and harassment at work, we strongly suggest that you consult with your union adviser as soon as possible. You can thus benefit from valuable support and sound advice at all stages, while taking into account the union's legal obligations in such matters.

**In all scenarios, the final decision to refer a grievance to arbitration is made by the union:**

- As a signatory of the collective agreement, the union is the party that files all grievances and can decide not to send a grievance to arbitration, even if it goes against the wishes of the member who submitted it.<sup>31</sup>
- In this context, the Tribunal does not substitute its own opinion for that of the union, but instead only ensures that the decision is based on a serious and complete review of the file, and not based on arbitrariness, bad faith, discrimination, or negligence.<sup>32</sup>
- The union must decide, based on the findings of its investigation, if proceeding with arbitration is the best decision by taking into account the best interests and common good of its members. To do so, it must assess the chance of success of the grievance, but it can also base its decision on other criteria. In the Gendron decision,<sup>33</sup> the Supreme Court found the following:

In a situation of conflicting employee interests, the union may pursue one set of interests to the detriment of another as long as its decision to do so is not actuated by improper motives and as long as it turns its mind to all the relevant considerations. [...] The choice of one claim over another is not in and of itself objectionable. Rather, it is the underlying motivation and method used to make this choice that may be objectionable.

In cases of sexual violence and harassment, the Tribunal has recognized the union's right to make ethical choices, providing, however, that it first carries out a serious investigation:

In cases of sexual assault, unions are justified in asking whether they should defend the alleged victim or the alleged aggressor, especially when both are employees covered by the collective agreement. The policy that has been adopted—to conduct as serious an investigation as possible, to give the benefit of the doubt and, as a general rule, not to pursue the grievance if there has in

fact been an assault—is perhaps not perfect, but it is not up to the Tribunal, as mentioned above, to judge or second-guess union decisions.<sup>34</sup>

It is important, however, to keep in mind that the more serious a disciplinary measure is (e.g., dismissal), the more cautious the union should be before depriving employees of their grievance rights. Even support for a sexual harassment policy must not lead to systematic refusal to defend a employee who is at fault. The union must thus assess if the severity of the measure imposed by the employer is disproportionate to the misconduct. If it is seen as such, unions generally choose to contest the severity of the disciplinary measure judged to be disproportionate.

### **Confidentiality**

Once a violence or harassment complaint gives rise to disciplinary measures, confidentiality is no longer possible. The union cannot conduct a serious investigation and confront the alleged harasser without informing said person of the name of the complainant and the nature of the complaint.

### **GRIEVANCE FILED BY THE PERSON REPORTING THE SITUATION**

- Despite the findings of the investigation, it is possible that the person reporting the situation may wish to file a grievance against the employer if the person considers that the employer failed in its duty to provide a workplace free of psychological harassment.
- If the union investigation allows for concluding that there was an absence of psychological harassment, the union would not be violating its duty of representation if it refuses to submit to arbitration the grievance of the member who alleges having experienced psychological harassment in the absence of evidence on this matter.<sup>35</sup> Once again, it is important that the union conducted a serious, full investigation that was independent from that of the employer and that it met with all those involved in order to make an objective, informed decision.<sup>36</sup>

### **GRIEVANCE FILED BY THE PERSON BEING REPORTED**

- When the disciplinary measure imposed is severe, the union must exercise caution before refusing to refer the grievance to arbitration. As such, even if it is confirmed that a member engaged in acts of harassment toward another member, the union may choose to defend the interests of the person who was reported via the arbitration procedure if, for example, the imposed measure is disproportionate.
- If, following the union investigation, there is still doubt between the opposite versions of the facts provided by two employees and in the absence of a witness, the union must defer to a grievance arbitrator or administrative judge who will

make a decision based on the credibility of one of the employees in the opinion of the arbitrator or judge.<sup>37</sup>

- The union must find a balance between the interests involved and is not required to defend the indefensible. For example, it has been acknowledged that a union that chooses not to represent a member who was dismissed for sexually assaulting another member would not be violating its duty of representation if the evidence is sufficient to conclude that the assault in fact took place.<sup>38</sup>
  - On the contrary, in the face of allegations made by the complainant, the union must avoid taking for granted that harassment took place and leaving those being reported to fend for themselves without bothering to conduct a serious, full investigation to shed light on the situation.<sup>39</sup>
- It is important to remember that the union has a duty of representation toward both the employee who is the alleged victim of psychological harassment and the person being reported.
  - In this context, the union must avoid, during the investigation process, putting itself in a situation that would involve a conflict of interest.
  - Its decision to send the grievance of the person being reported to arbitration must be based on objective aspects and not only on impressions.
  - Remember that the burden of proof is on the person who alleges that psychological or sexual harassment took place.
  - The union must inform the person being reported of all complaints and statements made against the person so that the person can respond to them.
- Unions that decide not to represent a member must be extremely transparent, vigilant, and objective in their decision-making.<sup>40</sup> In fact, the member's personal interests in contesting a dismissal or severe disciplinary measure are great.<sup>41</sup> In this context, it is all the more important that the union conduct a serious, full investigation. The union must take reasonable action to perform an objective, serious analysis of the facts surrounding the grievance in question.<sup>42</sup>
- In all cases, if the union decides not to refer grievances to arbitration, it must meet with individuals being reported and inform them of the union's decision not to represent them.<sup>43</sup>

#### **WITHDRAWING THE GRIEVANCE OF THE PERSON REPORTING THE SITUATION**

Some situations allow for the union to withdraw the grievance of the person reporting the situation. The following are examples of such situations:

- When a method of managing disputes allows for putting an end to the problematic situation to the satisfaction of the person who reported it. It would therefore be prudent to obtain a document signed by the person stating that the person is satisfied with the solutions or methods implemented to resolve the problematic situation.

- If, after the investigation, the union finds that there was no violence, harassment, or vexatious behaviour.
- When the problematic situation has ended and a satisfactory settlement for the parties and for the person involved is reached. It would also be prudent to obtain a document signed by the person stating that the person is satisfied with the solutions or methods implemented to resolve the problematic situation.
- When the problematic situation has ended and a satisfactory settlement for the parties is reached, if such a settlement is satisfactory, considering what could be ordered by an arbitrator. In this case, even if the employee is not satisfied with the settlement, the union may decide to withdraw the complainant's grievance.
- Various modes of redress can allow for implicitly recognizing the damage suffered and for providing a form of compensation (apology from the accused individual, reimbursement of health care professional consultation fees, compensation for lost wages during sick leave, etc.).

#### **WITHDRAWING THE GRIEVANCE OF THE PERSON BEING REPORTED**

Other situations allow for the union to withdraw the grievance of the person being reported. The following are examples of such situations:

- When an in-depth union investigation finds that the person being reported exhibited violent conduct or vexatious behaviour toward or harassed the complainant and when the penalty imposed is reasonable or less than what would usually be expected in similar circumstances.
- When an agreement is made between the union and the employer and when it is satisfactory considering what could be ordered by an arbitrator.

## CONCLUSION

We hope that this intervention guide equipped you and allowed you to understand all aspects of your union role in matters of conflict, incivility, violence, and harassment at work. You can consult it each time a problematic situation occurs and make it available to those responsible for handling these situations on your executive committee. We would like to reiterate the importance of asking the CSN union adviser who supports your union life for assistance when necessary.

As we have seen, there can be many different causes of problematic situations. The quicker we intervene, the better our chances of putting a stop to them and resolving them.





## NOTES AND REFERENCES

- 1 Charter of human rights and freedoms, CQLR, c. C-12. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/c-12>.
- 2 Act respecting labour standards, CQLR, c. N-1.1, s. 81.18. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/N-1.1>.
- 3 Commission des droits de la personne et des droits de la jeunesse du Québec. 2004. *Discriminatory Harassment in the Workplace*. [www.cdpdj.qc.ca/storage/app/media/publications/discriminatory\\_harassment\\_workplace.pdf](http://www.cdpdj.qc.ca/storage/app/media/publications/discriminatory_harassment_workplace.pdf).
- 4 Andersson, Lynne M., and Christine M. Pearson. 1999. "Tit for Tat? The Spiraling Effect of Incivility in the Workplace." *Academy of Management Review* 24 (3): 452–471.
- 5 [Our translation]. Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). 2019. "Comprendre et prévenir le harcèlement psychologique au travail — Guide pratique de l'employeur" [Understanding and preventing psychological harassment at work—Practical employer guide]. <https://www.cnesst.gouv.qc.ca/Publications/200/Documents/DC200-1003web.pdf>.
- 6 Morin, Fernand, and Rodrigue Blouin. 2012. *Droit de l'arbitrage de griefs* [Grievance arbitration law]. 6th ed. Montréal: Éditions Yvon Blais. Par. IX 66.
- 7 Hirigoyen, Marie-France. 2001. *Malaise dans le travail. Harcèlement moral: Démêler le vrai du faux* [Unease at work. Psychological Harassment: Disentangling truth from fiction]. Paris: Éditions La Découverte and Syros.
- 8 Tribunal de grande instance de Paris. 31<sup>e</sup> chambre. December 20, 2019. No. 09357090257.
- 9 Civil Code of Québec, CQLR, c. CCQ-1991. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/ccq-1991>.
- 10 Act respecting labour standards, CQLR, c. N-1.1. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/N-1.1>.
- 11 Act respecting occupational health and safety, CQLR, c. S-2.1. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/s-2.1>.
- 12 Criminal Code, RSC 1985, c. C-46. <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html>.
- 13 Crime Victims Compensation Act, CQLR, c. I-6. <http://legisquebec.gouv.qc.ca/en/showDoc/cs/I-6>.
- 14 Canadian Human Rights Act, RSC 1985, c. H-6. <https://laws-lois.justice.gc.ca/eng/acts/h-6/FullText.html>.
- 15 Canada Occupational Health and Safety Regulations, SOR/86-304.
- 16 An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1, S.C. 2018, c. 22. [https://laws.justice.gc.ca/eng/AnnualStatutes/2018\\_22/FullText.html](https://laws.justice.gc.ca/eng/AnnualStatutes/2018_22/FullText.html).
- 17 Canada Labour Code, RSC 1985, c. L-2. <https://laws-lois.justice.gc.ca/eng/acts/L-2/FullText.html>.
- 18 Labour Code, CQLR, c. C-27. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/C-27>.
- 19 Act respecting industrial accidents and occupational diseases, CQLR, c. A-3.001. <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-3.001>.
- 20 Act respecting industrial accidents and occupational diseases, CQLR, c. A-3.001, s. 270. <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/A-3.001>.
- 21 Act respecting labour standards, CQLR c. N-1.1, s. 123.16. <http://legisquebec.gouv.qc.ca/en/showdoc/cs/N-1.1>.
- 22 Syndicat des Agents de la Paix en Services correctionnels du Québec et Québec (Ministère de la sécurité publique) (Détenion), 2007 QCCLP 4912, SOQUIJ AZ-50448558.
- 23 For more information about this situation, see p. 33–34 of the [Guide for the Prevention of Violence and Harassment at Work](#) and the union adviser who is assisting you.
- 24 One component of stress is the feeling of not having any control or having little control over a situation. As such, increasing or taking back this control over the situation is a way to manage or reduce the stress associated with the situation.

- 25 *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 SCR 509.26
- 26 *Labour Code*, CQLR c. C-27.
- 27 *Noël v. Société d'énergie de la Baie James*, [2001] 2 SCR 207. 207.
- 28 A single serious incident may also constitute psychological harassment if it affects the dignity or physical or psychological integrity of a person and has a lasting harmful effect on the person. See paragraph 2 of article 81.18 of the *Act respecting labour standards*.
- 29 See APPENDIX 5, [Analysis Grid of Risk Factors for Conflict, Violence or Harassment at Work](#).
- 30 Do not forget that the deadline to apply for indemnities with the CNESST is six months after the last manifestation of violent behaviour or harassment.
- 31 Morin, Fernand, and Rodrigue Blouin. 2012. *Droit de l'arbitrage de griefs* [Grievance arbitration law]. 6th ed. Montréal: Éditions Yvon Blais. 185.
- 32 *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 SCR 509; *Tremblay v. Syndicat des employées et employés professionnels-les et de bureau, section locale 57*, [2002] 2 SCR 627; *Noël v. Société d'énergie de la Baie James*, [2001] 2 SCR 207; *Syndicat des fonctionnaires municipaux de Montréal (SCFP) c. Gauvin*, 2011 QCCA 605; *Syndicat national des employées et employés du Centre de soins prolongés Grace Dart (CSN) c. Holligin-Richards*, 2006 QCCA 158.
- 33 *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 SCR 1298.
- 34 [Our translation]. *Bouchard c. Syndicat des employés du centre hospitalier St-Augustin*, 1996 CanLII 17513.
- 35 *Tremblay c. Syndicat des enseignants du séminaire Marie-Reine-du-Clergé*, 2008 QCCRT 1; *Raymond c. Syndicat national de l'automobile, de l'aérospatiale, du transport et des autres travailleurs(euses) du Canada (TCA-Canada)*, 2005 QCCRT 578.
- 36 *Tremblay c. Syndicat des enseignants du séminaire Marie-Reine-du-Clergé*, 2008 QCCRT 1; *Raymond c. Syndicat national de l'automobile, de l'aérospatiale, du transport et des autres travailleurs(euses) du Canada (TCA-Canada)*, 2005 QCCRT 578.
- 37 *Vallières c. Alliance du personnel professionnel et technique de la santé et des services sociaux (CPS et APTMQ)*, 2011 QCCA 588; *Yossofzai c. Syndicat des travailleurs(euses) du Ritz-Carlton-C.S.N.*, 2002 CanLII 5686.
- 38 *Bouchard c. Syndicat des employés du Centre hospitalier St-Augustin*, 1996 CanLII 17513 (judicial review dismissed: CSQ, 200-05-004678-962, July 25, 1996; appeal dismissed: CAQ, 200-09-001073-961, September 11, 1997); *Landry c. Syndicat des travailleuses et travailleurs de l'Hôtel-Dieu du Sacré-Cœur de Jésus de Québec*, 1993 CanLII 14266 (judicial review dismissed: CSQ, 200-05-002044-936, October 19, 1994).
- 39 *Frangiosa et Syndicat des travailleuses et travailleurs du Marriott Château Champlain-CSN*, 2016 QCTAT 6355.
- 40 *Lelièvre c. Syndicat national des employés de la Ville de Port-Cartier (CSN)*, 2009 QCCRT 0286; *Frangiosa et Syndicat des travailleuses et travailleurs du Marriott Château Champlain-CSN*, 2016 QCTAT 6355; *Vallières c. Alliance du personnel professionnel et technique de la santé et des services sociaux (CPS et APTMQ)*, 2011 QCCA 588.
- 41 *Centre Hospitalier Régina Ltée v. Labour Court*, [1990] 1 SCR 1330.
- 42 *Tremblay c. Syndicat des enseignants du Séminaire Marie-Reine-du-Clergé*, 2008 QCCRT 0001.
- 43 *Lelièvre c. Syndicat national des employés de la Ville de Port-Cartier (CSN)*, 2009 QCCRT 0286.



# APPENDIX





## SITUATIONS OF CONFLICT, INCIVILITY, VIOLENCE, OR HARASSMENT

## Self-Assessment of My Ability to Intervene



### What to do before intervening: Some questions to ask yourself

Am I the right person? Do I have biases? Do I have the emotional distance needed? Am I equipped enough? Is this the right time to hold the meeting? Is it at an appropriate location? These are a range of questions we need to ask ourselves before deciding to intervene in problematic situations, as well as situations of violence or harassment at work.

From our observations and comments received by several union representatives, we developed a self-assessment grid to allow you to assess, as fairly as possible, your level of preparedness to intervene. The questions being proposed are grouped in two tables at the end of this sheet. They cover topics that are known to influence our ability to act neutrally and objectively. Here is an overview of such topics:

- Do I need to deal with specific issues involving individuals based on certain criteria?
- Do I have a particular affinity for certain individuals based on certain criteria?
- Do I need to deal with specific issues related to certain situations?
- Will these issues influence my approach?
- Do I have the skills required to intervene in all situations?

For you to get the most out of this self-assessment grid, we recommend that you answer these questions as honestly as possible. The tool is not aimed at assessing your shortcomings, weaknesses, or biases. The primary goal of this grid is to help you, to equip you, and mainly to give you the opportunity to become aware of your strengths and limits. Therefore, its goal is to allow the union to choose the best person to intervene with a member directly involved in a situation of conflict, incivility, violence, or harassment.



We suggest that you complete it immediately and review it several times per year. If a new situation puts you off or bothers you, we invite you to answer the questions again with the situation in mind.

Finally, we suggest that you share this personal reflection with your co-workers on the executive committee and with the union adviser that assists you in carrying out your duties. It is also possible that training activities can allow you to become better prepared to handle these situations and that such training activities can broaden your intervention skills. Through discussions with your colleagues within your union, your federation, and the CSN, you will be able to determine how to handle such situations.

**GUIDELINES**

1. Answer all questions.
2. Rate your level of agreement using the following scale: 1 = not a problem at all, 3 = an occasional problem, 5 = a frequent problem, N/A = not applicable.
3. Go back to the questions you answered with a “3” and try to specify the circumstances in which certain situations sometimes become more difficult.
4. Go back to the questions you answered with a “5” and try to determine what you would need to better get through such situations.





**Grid—Self-Assessment of My Ability to Intervene**

<b>GENERAL QUESTIONS</b>				
<b>STATEMENTS</b>	<b>1 NOT A PROBLEM AT ALL</b>	<b>3 AN OCCASIONAL PROBLEM</b>	<b>5 A FREQUENT PROBLEM</b>	<b>N/A</b>
I take time to take care of the individuals I meet with, no matter the nature of the situation being handled.				
I am able to remain calm when faced with difficult situations.				
I am able to disentangle emotions and facts.				
I am able to ask sensitive questions that may be difficult to hear.				
I am able to put aside my feelings.				
I am able to be objective.				
I am able to be calm in the presence of individuals who are upset.				
I am able to be calm with individuals who are in tears.				
I am able to be calm with individuals who are angry.				
I am able to remain neutral with individuals who engage in harassment.				
I am able to remain calm in situations involving physical aggression.				
I know how to remain neutral in situations of sexual harassment.				
I know the difference between my own tolerance level and that of individuals reporting a situation.				
I know the difference between my own tolerance level and that of individuals being reported.				



**APPENDIX I**

<b>GENERAL QUESTIONS</b>				
<b>STATEMENTS</b>	<b>1 NOT A PROBLEM AT ALL</b>	<b>3 AN OCCASIONAL PROBLEM</b>	<b>5 A FREQUENT PROBLEM</b>	<b>N/A</b>
I do not have biases.				
I feel comfortable with individuals whose cultural background is different than mine.				
I feel comfortable with individuals whose gender is different than mine.				
I feel comfortable with individuals of all sexual orientations.				
I feel comfortable with individuals at varying hierarchical levels.				
I know when I succumb to judgment.				
I know how to manage my emotions and do what it takes so that they do not cloud my judgment.				
I have an adequate network of contacts who will support me throughout the meeting and support process for the person experiencing the problematic situation or for the person who is being reported.				

<b>GIVEN THE ANSWERS TO THE PREVIOUS QUESTIONS:</b>	<b>1 NOT A PROBLEM AT ALL</b>	<b>3 AN OCCASIONAL PROBLEM</b>	<b>5 A FREQUENT PROBLEM</b>	<b>N/A</b>
I believe that I am able to adequately carry out my role with those involved: those who are experiencing the problematic situations, those being reported, or witnesses.				
I believe that I am able to carry out my role with those involved (those who are experiencing the problematic situations, those being reported, or witnesses), but I will certainly need assistance.				
I believe that the possibility that I will not be able to adequately carry out my role in this situation is quite high and that, as a result, it would be preferable if someone else were to handle this process.				



**APPENDIX I**

What support do I need?

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In what contexts or types of situations?

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## SITUATIONS OF CONFLICT, INCIVILITY, VIOLENCE, OR HARASSMENT

## The Role of the Person Providing Assistance—Personal Reflection Tool



### The role of the person providing assistance

Union representatives may be called on to play different roles with those involved in situations of conflict, incivility, violence, or harassment. Union representatives may need to intervene

- with one of the parties in an interpersonal conflict;
- with an individual who is experiencing a situation of incivility, violence, or harassment;
- with the person being reported for such a situation; or
- with a witness to such a situation.

The role of the person providing assistance from the union is based on one basic principle that applies to everyone involved: neutrality. This means that the person providing assistance

- does not take sides;
- refers those involved to resources that or individuals who can help them;
- ensures that the rights of all those directly involved (the person reporting the situation and the person being reported) are preserved; and
- ensures that the physical and psychological well-being of those involved is preserved.

In short, the person providing assistance from the union conducts the initial meeting with individuals and guides them through the process in which they are involved.

In situations that involve two members of the same union, we strongly recommend, to maintain objectivity and neutrality, that the person reporting the situation and the person being reported not receive assistance from the same union representative.

It is important, when a person approaches the union about a situation of conflict, incivility, violence, or harassment, that the first meeting is as positive as possible and that it contributes to fostering a climate of trust. The next sections will address appropriate and recommended behaviour.





### Required knowledge

For those providing assistance to be able to carry out their roles in the best way possible, they must be able to

- know and understand the violence and harassment prevention policy, as well as the procedures implemented by the employer;
- know and understand the provisions of the Act respecting labour standards or those of the *Canada Labour Code* on psychological and sexual harassment at work; and
- know and understand the differences between the concepts of interpersonal conflict, violence, harassment, incivility, and the enforcement of management rights.



### Appropriate expertise

You must behave appropriately and act in a certain way while taking into account the situation being reported to you.

- Greet those involved in a caring, compassionate, and reassuring manner, by showing that you recognize the emotional nature of the situation, which will favour the building of trust in you.
- Plan for a meeting location that is out of sight and out of the range of prying ears, which will allow for some privacy and encourage those involved to tell their story in complete confidence.
- Use the available information sheets based on what was experienced. These sheets can be useful for those involved in terms of what will be proposed to them as the next steps.
- Provide straight answers to questions; tell the truth in the simplest way possible.
- If the person is a victim of a situation of violence or harassment at work, make sure that you meet the person's safety needs in the short term.
- If the person is a witness of a situation that seems to involve violence or harassment at work and the person is hesitating to take the next step, remind the person of the "duty" to report what is unacceptable and tell the person that you will need to contact the person who is experiencing the situation, given that you have now been informed of a potential situation of violence or harassment and that the union must contribute to preventing and putting a stop to such situations.
- If the person is the subject of a complaint or allegation of violence or harassment, provide the person with the necessary support, without judgment, so that the person can build trust in you and in the union.

In all circumstances, keep your personal opinions to yourself, because they can adversely affect you or undermine the trust those involved have in you and in the union.



**Interpersonal skills**

Listen more than you speak and remind yourself that the person you are meeting with needs to confide in someone and be heard.

- Do not make arguments; it is too early for that.
- Be empathetic and welcoming; do not judge.
- Stay calm in order to contribute to reassuring the person being met with.
- Do not forget to remain neutral and do not take sides. You can reassure the person, show that you understand the person's perspective, and listen and ask questions without taking sides.
- Keep in mind that the problematic situation may have various origins and that it may not constitute workplace violence or harassment.





# Problematic Situation Report Form

THIS FORM ALLOWS FOR REPORTING A SITUATION INVOLVING CONFLICT, INCIVILITY, VIOLENCE, OR HARASSMENT.

**SECTION I**



**Person reporting the situation**

Last name: .....	First name: .....
Position: .....	
Connection to the situation being reported (witness or person experiencing a problematic situation): .....	

**Information about the person(s) being reported (Who?)**

Last name: .....

First name: .....

Position: .....

Last name: .....

First name: .....

Position: .....

Last name: .....

First name: .....

Position: .....



SECTION 2



**Description of the context of the problematic situation**

Briefly describe your work history for this employer, the events that led to the problematic situation being reported (e.g., job cuts, new manager, new co-workers) or any other elements that allow for a general understanding of the situation (if needed, you can attach additional sheets).

Dotted lines for writing.



**SECTION 3**



**Description of the allegations**

For each of the allegations, provide the following information (if needed, you can attach additional sheets):

- o **Date** (When?) and **location** (Where?) **of the incident**;
- o **Name of the person being reported** (Who?) and **facts**—gestures, verbal comments, attitudes, or conduct (What?); and
- o **Witnesses** (With whom?).

**FACT 1:** \_\_\_\_\_

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Witnesses: \_\_\_\_\_

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**FACT 2:** \_\_\_\_\_

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Witnesses: \_\_\_\_\_

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**APPENDIX 3**

**FACT 3:** \_\_\_\_\_

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Witnesses: \_\_\_\_\_

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**FACT 4:** \_\_\_\_\_

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Witnesses: \_\_\_\_\_

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**FACT 5:** \_\_\_\_\_

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Witnesses: \_\_\_\_\_

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**APPENDIX 3**

Did you try to resolve the situation?    Yes     No

If you selected “Yes,” starting after which allegation (When)?

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How did you try to resolve the situation?

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Is your hierarchical supervisor or another representative of the employer aware of this situation?

Yes     No

If you selected “Yes,” what is the name of this person? .....

What is this person’s role? .....

Did this person try to resolve the situation?    Yes     No

If you selected “Yes,” what steps were taken?

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**APPENDIX 3**

**Si vous avez des symptômes physiques ou psychologiques, indiquez depuis quand.**

I have experienced physical symptoms related to this situation since (day-month-year):

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I have experienced psychological symptoms related to this situation since (day-month-year):

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In your opinion, what solutions could be implemented to resolve and put an end to this situation?

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Comments:

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**Calculate the grievance deadline**

Date of the most recent event: .....

**Grievance deadline** (add two years to the date of the most recent event): .....

Name of the person who filled out the form: .....

Date : .....





## SITUATIONS OF CONFLICT, INCIVILITY, VIOLENCE, OR HARASSMENT

## Making a Distinction Between Facts and Perceptions

**Facts** are indisputable, unbiased, and verifiable information. For example, it is an observable fact that water boils at 100 °C. Verbal comments and gestures are observable facts.

**Perceptions** are ideas or understandings that we may have of something or a situation that are only somewhat accurate. Our perceptions are subjective because different individuals may have different interpretations of the same situation. As such, a number of people may disagree with the following statement: “It’s a beautiful day today.” For these people, it may be too hot out, too cold out, etc.

In situations of conflict, violence, or harassment at work, it is important to stick to the facts and not let our perceptions get in the way. By listing the various facts related to each of the events that occurred, we can objectively analyze the situation and see it more clearly.

Differentiating between facts and perceptions is not always easy, but it is an essential skill for shedding light on a situation and improving our relationships.

**For each alleged event, take note of observable and verifiable facts:**

- The location of the event
- The date and, if possible, the time
- Verbal comments, written comments (emails, etc.)
- Gestures and conduct
- Volume and tone of voice
- Facial expressions, the look in the person’s eyes
- Body movement and position
- Individuals present (witnesses)



## Analysis Grid of Risk Factors for Conflict, Incivility, Violence, or Harassment at Work

RISK FACTORS AND POSSIBLE SOLUTIONS				
RISK FACTORS	RISK LEVELS			POSSIBLE SOLUTIONS
	LOW	MODER- ATE	HIGH	
Ambiguity or lack of details with respect to duties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Clarify expectations and misunderstandings</li> <li>- Clearly define roles and duties</li> <li>- Consult with individuals, specifically about work methods</li> </ul>
Work overload or unfair distribution of the workload	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Clearly define roles and duties</li> <li>- Consult with staff members</li> <li>- Promote collaboration</li> </ul>
Work tools not adapted to carrying out duties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Ensure that work tools are appropriate for job requirements and for the work carried out</li> <li>- Consult with individuals about work methods</li> </ul>
Lack of respect	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Assert the value of respect and civility</li> <li>- Encourage open communication</li> <li>- Promote collaboration and teamwork</li> <li>- Hold meetings to discuss the work atmosphere</li> </ul>
Authoritarian or lax supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Provide manager training on various aspects of management</li> </ul>
Excessive competition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Promote collaboration and teamwork</li> <li>- Encourage multidisciplinary team projects</li> <li>- Encourage open communication</li> </ul>
Unmanaged or poorly managed conflicts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Demonstrate leadership in matters of conflict management</li> <li>- Assert the value of asking for help</li> <li>- Intervene quickly</li> <li>- Assess the work atmosphere</li> </ul>



**APPENDIX 5**

<b>RISK FACTORS AND POSSIBLE SOLUTIONS</b>				
RISK FACTORS	RISK LEVELS			POSSIBLE SOLUTIONS
	LOW	MODER- ATE	HIGH	
Envy, jealousy, or rivalry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Encourage open communication</li> <li>- Distribute workload fairly</li> <li>- Promote collaboration and teamwork</li> <li>- Clearly define roles and tasks</li> <li>- Hold discussion forum meetings</li> </ul>
Lack of communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Encourage open communication</li> <li>- Promote collaboration and teamwork</li> <li>- Hold discussion forums (to encourage social support)</li> </ul>
Normalization or denial of violence or harassment in the organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Raise employee awareness</li> <li>- Invite employees to speak about problematic situations</li> <li>- Assert the value of reporting</li> </ul>
Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>- Consult with staff members (satisfaction)</li> <li>- Train employees on workstation adjustment</li> <li>- Promote awareness of proper posture</li> <li>- Make necessary corrections</li> <li>- Provide appropriate furnishings</li> </ul>

Grid adapted from Commission des normes du travail. 2004. *Guide de prévention à l'intention des employeurs de la grande entreprise* [Prevention guide for large employers]. Québec: Commission des normes du travail.



## Benchmarks

To help you determine whether behaviour constitutes psychological harassment, ask yourself the following questions:

- 1** | would a reasonable person, who is familiar with the circumstances and in a similar situation to that described by the employee, consider this behaviour to be vexatious (hurtful, humiliating)?
- 2** | Were there several (repeated) incidents or was there a single serious incident? If there was a single serious incident, did it have a lasting harmful effect?
- 3** | Was the behaviour (conduct, verbal comments, actions, or gestures) hostile (with aggressive intent) or unwanted?
- 4** | Did the behaviour affect the person's dignity or physical or psychological integrity?
- 5** | Did the behaviour create a hostile work environment?

# Grid for Analyzing the Admissibility of a Psychological Harassment Complaint



**Harassment situation involving repeated events**

CRITERIA	YES ✓	WITNESSES AND EVIDENCE
<b>1. Vexatious behaviour</b> Make a list of <b>allegations</b> (conduct, verbal comments, written comments, gestures, actions)		
<b>FACT 1:</b>		
<b>FACT 2:</b>		
<b>FACT 3:</b>		
<b>FACT 4:</b>		

Date of the first occurrence: .....

Date of the most recent occurrence: .....

Grievance deadline: .....



**APPENDIX 7**

CRITERIA		YES √	EXPLAIN AND JUSTIFY
2. Repeated behaviour			
3. Hostile or unwanted behaviour			
4.	Behaviour that affects dignity		
	_____ or _____ Behaviour that affects physical or psychological integrity		
5. Harmful work environment			

Grid filled out by ..... Date : .....





**Harassment situation involving only one serious incident**

CRITERIA	WITNESSES AND EVIDENCE
<p><b>1. Describe the incident (vexatious nature and severity)</b></p>	

Date of the event: .....

Grievance deadline: .....

CRITERIA		YES ✓	EXPLAIN AND JUSTIFY
2.	<p><b>Behaviour that affects dignity</b></p>		
	<p style="text-align: center;">or</p> <p><b>Behaviour that affects physical or psychological integrity</b></p>		
<p><b>3. Lasting harmful effect on the person reporting the situation</b></p>			

Grid filled out by ..... Date : .....



## Psychological Harassment at a Glance<sup>1</sup>



### The Act respecting labour standards and the sections related to psychological harassment

- Provisions in the Act respecting labour standards:
  - A definition of psychological harassment (s. 81.18);
  - Employer obligations (s. 81.19):
  - Article **81.19**: “Every employee has a right to a work environment free from psychological harassment. Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.”
    - \* Since January 1, 2019, the employer has an obligation to adopt and make available to its employees a prevention and complaint processing policy. This policy must include, “in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.”
  - A grievance “must be filed **within two years of the last incidence**” (s. 123.7).



### Psychological harassment according to the Act respecting labour standards (s. 81.18)

- “[V]exatious behaviour [...]”;
- [R]epeated [...] conduct, verbal comments, actions or gestures[;]
- [H]ostile or unwanted conduct, verbal comments, actions or gestures[;]
- [Behaviour] that affects an employee’s dignity or psychological or physical integrity[; and]
- [Behaviour] that results in a harmful work environment for the employee.

For greater certainty, psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature.

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





## The five criteria listed in the definition of psychological harassment

The definition in the *Act respecting labour standards* contains five criteria that must be met to conclude that a situation consists of psychological harassment. The first three relate to characteristics of harassment, and the last two relate to its consequences. Below are the criteria and several questions and answers to facilitate understanding.

### 1. VEXATIOUS BEHAVIOUR

- Vexatious behaviour is demeaning, offensive or abusive and affects a person's dignity and causes torment.
- It is outside the realm of what a reasonable person believes to be acceptable at work.
  - The reasonable person test allows for analyzing situations in an objective manner. Would a reasonable, objective person who is well-informed of all of the circumstances and placed in the same situation conclude that harassment took place?
- Vexatious behaviour is assessed from the perspective of the person who experiences it, without taking into consideration the intentions of the person perpetrating the behaviour. The perpetrator's malicious intent does not have to be proven.
- Assessments must look at the nature, intensity and repetition of unwanted gestures and the impact these have on the victim.

### 2. REPEATED BEHAVIOUR

- If viewed as isolated incidents, the gestures may seem benign. However, their accumulation may constitute harassment.

#### **Q** Can a single incident constitute harassment?

- Yes, in this case, the harmful effects of the severity of the gesture must be lasting for the victim.
  - Example: An action leads to reasonable fear about the deterioration of working conditions or direct or implied threats. In both cases, the incident may have lasting harmful effects.
  - In this case once again, the relevant perspective is that of a reasonable, objective person who is well-informed and placed in the same circumstances. Would such a person conclude harassment has taken place?
- Accordingly, the more serious the behaviour, the less it would need to be repeated to be seen as harassment, and vice versa.



### 3. HOSTILE OR UNWANTED BEHAVIOUR

- The conduct, words, gestures, and actions must be perceived as hostile or unwanted.
  - Hostility is not necessarily blatant, and it is not imperative for the behaviour to be aggressive for it to qualify as hostile. Hostility can be defined as the conduct of a person acting as an adversary.
  - Viewed as isolated incidents, acts may seem benign; however, their accumulation may constitute harassment.

**Q If the person never expressed disapproval or refusal, can it be a situation of harassment?**

- To conclude that alleged conduct, verbal comments, gestures, or actions are unwanted, the victim does not necessarily have to express refusal.
- “Unwanted” makes reference to all of the vexatious behaviour.
- The allegations must objectively qualify as “unwanted.”

### 4. AN AFFRONT TO DIGNITY OR PHYSICAL OR PSYCHOLOGICAL INTEGRITY

- Human dignity:
  - Refers to the concepts of self-respect and self-esteem.
  - Dignity is affected when a person is marginalized, ignored, and undervalued.
- The negative impact of the harassment may affect the person on two levels:
  1. Effects on dignity: feeling personally or professionally belittled, undervalued, or denigrated; and
  2. Effects on integrity: harassment can also lead to the deterioration of physical or psychological health.

Effects on dignity and effects on integrity are two concepts that are closely linked to the harmful effects of the behaviour on the person experiencing the harassment. This inseparable link is relevant in cases of both isolated and repeated incidents.

**Q Are effects on integrity needed to conclude that a situation consists of harassment?**

- No. There can also be harassment if there are effects on dignity. It must be shown that there are effects on either dignity or integrity.

## 5. A HARMFUL WORK ENVIRONMENT

- Another criterion involves a damaging environment that causes harm and negatively affects the person experiencing the harassment:
  - A negative, unpleasant work environment.
  - The work atmosphere created by the deviant behaviour can lead to the isolation of the victim.



## Manifestations of psychological harassment

- **Stopping individuals from expressing themselves.**  
Constantly interrupting individuals, criticizing their work and private lives, or prohibiting them from speaking to others.
- **Isolating individuals.**  
No longer speaking to, withholding information from, or misleading individuals, assigning them a workstation that is far from others, prohibiting others from speaking to such individuals, or denying their presence.
- **Bringing individuals into disrepute.**  
Badmouthing individuals, starting rumours about them, ridiculing them (imitating how they walk, their voice, their gestures, etc.), putting them down, humiliating them, evaluating them unfairly using malicious words and expressions, embarrassing them, using abusive language toward them, or sexually harassing them.
- **Discrediting individuals.**  
Giving individuals dirty looks, making innuendos, sending messages that make them feel that they are not valued in our eyes (without telling them so directly), giving them demeaning, useless tasks that are below their skill levels, impeding them, circulating rumours about them, denigrating their work in front of others, etc.
- **Unsettling individuals.**  
Calling into question their abilities, mocking their tastes or convictions, or making malicious innuendos.
- **Threatening or assaulting individuals.**  
Screaming, shoving, or breaking the personal effects of such individuals.





## Other forms of harassment at work<sup>2</sup>

- **Mobbing:**  
A series of hostile remarks and behaviour expressed or engaged in over a fairly long period of time by one or more persons directed at another person (the victim).
- **Sexual harassment:**  
“[B]ehaviour characterized by repeated and unsolicited sexually connotative remarks, acts or gestures that could undermine the dignity or the physical or psychological integrity of the individual or lead to unfavorable working conditions.”
- **Discriminatory harassment:**
  - “[B]ehaviour characterized by repeated and unsolicited words [...] or gestures of a vexatious or contemptuous nature, [toward an individual or group of individuals], based on any of the grounds enumerated in [section] 10 of [Quebec’s] *Charter of Human Rights and Freedoms*.”
  - The grounds enumerated in section 10 of the Charter are “race, colour, sex, gender identity or expression, 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.”
- **Abuse of power or authority:**  
“Abuse of authority is a form of harassment [...] that occurs when an individual misuses the power and authority inherent in his or her position to endanger a person’s job, undermine the person’s performance of that job, threaten the person’s economic livelihood, or [interfere with] the person’s career [in any other way]. It includes intimidation, threats, blackmail and coercion.”



## What psychological harassment is not

### INTERPERSONAL CONFLICTS IN THE WORKPLACE

Workplaces are no different than other environments—conflicts can arise. By itself, a conflict does not constitute psychological harassment. Conflicts involve a symmetrical relationship between individuals. In a conflict, criticism is stated in a clear manner and comes from all those involved in the conflict. Each of these individuals tries to retain control. If they are well managed, conflicts can lead to the development and improvement of certain work methods.



However, as the saying goes, “the longer we wait, the worse it will get,” which could definitely be true in the case of conflicts. Until a conflict is resolved, it tends to escalate, and the individuals involved may try to find new allies to take their sides. At this point in time, the situation may shift and become a case of harassment; one of the individuals can denigrate, insult, or criticize the work of another person involved in the conflict, or even start rumours about such a person. When they are not well managed, conflicts can also become situations that lead to violence and harassment.

### **WORK-RELATED STRESS**

Stress may be triggered by any aspect of our environment that requires an action. It is our body’s response to such a situation. This reaction is normal and essential for our survival. A workplace with multiple sources of stress can be a breeding ground for situations of violence and harassment.

Such sources of stress can include work overload, little authority to make decisions, lack of support or acknowledgement, poorly defined roles, incomplete or ambiguous communication, etc. Unlike stress, which is only destructive in excess, harassment is destructive by nature.<sup>3</sup>

### **STANDARD MANAGEMENT RIGHTS**

If employers or managers exercise their management rights, it does not constitute harassment, even though it may lead to employees feeling uneasy. Day-to-day management of discipline, work performance, and absenteeism, assignment of work, applying graduated disciplinary measures, and even termination are integral elements of legitimate management rights. The employer thus has quite wide-ranging freedom to act, ensure that work procedures are complied with, and ensure that a reasonable amount of work is being carried out, as long as the employer acts in a respectful manner, as long as the employer’s interventions are made based on duties and not based on the person, and as long as the employer does not exercise these management rights in an abusive, unreasonable, or discriminatory manner. Finally, it is important to note that management rights also include the right for managers to make mistakes.

## DIFFICULT WORKING CONDITIONS AND PROFESSIONAL CONSTRAINTS

Some working conditions may seem difficult and have negative consequences on the health of workers without constituting harassment. The following elements do not constitute psychological harassment: difficult working conditions and professional constraints (e.g., work overload) and organizational changes (e.g., modified duties), when they are based on economic, technological, or organizational considerations and when they do not affect staff members in an arbitrary manner.

1. This document was inspired by the following document prepared by the CNESST on section 81.18 of the *Act respecting labour standards*: Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNEEST). 2016. "Interpretation Guide (Section 81.18 of the *Act respecting labour standards*)." <https://www.cnesst.gouv.qc.ca/fr/organisation/documentation/acces-linformation/documents-servant-prise-decision/normes-travail/loi-sur-normes-travail/chapitre-iv-normes-travail-art-391-97/section-v2-harcèlement-psychologique-art-8118-8120/article-8118>.
2. From the CSN's *Kit for the Prevention of Violence and Harassment at Work*.
3. Hirigoyen, Marie-France. 2001. *Malaise dans le travail. Harcèlement moral: Démêler le vrai du faux* [Unease at work. Psychological Harassment: Disentangling truth from fiction]. Paris: Éditions La Découverte and Syros.



## Organizational Risk Factors

Depending on the conditions in which it is carried out, work can be very rewarding and have positive effects on health. It can also be a source of suffering, conflict, harassment, and even disease. For over thirty years, a host of scientific studies and many articles published on the subject have come to the same conclusion: working conditions and work organization have an impact on the psychological health of workers. The following is a list of factors that have a negative impact on health and social relationships at work.



### Risk factors

- Little recognition of one's work
- Lack of support from colleagues or supervisors
- A workload that is too heavy or unfairly distributed
- Little flexibility in making decisions or little autonomy at work
- Lack of communication between management and workers or between workers themselves
- Ambiguity related to roles and duties
- Lack of organizational justice
- Few means for balancing work, family, and personal lives

However, it is important to note that when the exact opposites of the risk factors are in place, they become protective factors for health. For example, recognition of quality of work and effort is an important protective factor.



### Protective factors

- Recognition of one's work
- Support from colleagues or supervisors
- An appropriate workload
- Sense of autonomy and accomplishment at work
- Communication and dissemination of information
- Clearly defined roles and duties
- Organizational justice
- Various means for balancing work, family, and personal lives

Some situations must also be monitored because they are specifically associated with violence and harassment at work:<sup>1</sup>

- Lack of respect between staff members.
- Interpersonal conflicts
- Envy, jealousy, or rivalry
- Excessive competition
- Difficult interpersonal relationships (colleagues, supervisors, clientele)
- Lack of training or support following technological changes
- Inadequate or insufficient work tools
- A major change in the structure of the business or organization
- The arrival of a new manager, an internal promotion



## What about your working conditions?

Are some of these risk factors present in your workplace?

If so, tell your union representative which risk factors are present.

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1. Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). 2019. *Comprendre et prévenir le harcèlement psychologique au travail—Guide pratique de l'employeur* [Understanding and preventing psychological harassment at work—Practical guide for employers]. <https://www.cnesst.gouv.qc.ca/Publications/200/Documents/DC200-1003web.pdf>. [Consulted in April 2020].



## How to Distinguish Between Facts and Perceptions

**Facts** are indisputable, unbiased, and verifiable information. For example, it is an observable fact that water boils at 100 °C. Verbal comments and gestures are observable facts.

**Perceptions** are ideas or understandings that we may have of something or a situation that are only somewhat accurate. Our perceptions are subjective because different individuals may have different interpretations of the same situation. For example, a number of people may disagree with the following statement: “It’s a beautiful day today.” For these people, it may be too hot or too cold out, the wind may be unpleasant, etc.

In situations of conflict, violence, or harassment at work, it is important to stick to the facts and not let our perceptions get in the way. By listing the various facts related to each of the events that occurred, we can objectively analyze the situation and see it more clearly.

Differentiating between facts and perceptions is not always easy, but it is an essential skill for shedding light on a situation and improving our relationships. It is preferable, when possible, to have our perceptions confirmed by the person involved.

**For each alleged event, take note of observable and verifiable facts:**

- The location of the event
- The date and, if possible, the time
- Verbal comments, written comments (emails, etc.)
- Gestures and conduct
- Volume and tone of voice
- Facial expressions, the look in the person’s eyes
- Body movement and position
- Individuals present (witnesses)



# Rights and Obligations in Matters of Violence or Harassment at Work

This information sheet covers various legislative provisions that guarantee workers the right to work in a safe and healthy workplace. It also covers recourse that can be taken in situations of violence or harassment at work.



## Employee rights and employer obligations

### ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY

- **Section 9:** “Every worker has a right to working conditions that have proper regard for his health, safety and physical well-being.”
- **Section 12:** “A worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical well-being, or would expose another person to a similar danger.”
- **Section 13:** “No worker may, however, exercise his right under section 12 if his refusal to perform the work puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions under which the work is to be performed are ordinary conditions in his kind of work.”
- **Section 51:** “Every employer must take the necessary measures to protect the health and ensure the safety and physical well-being of his worker.”

### QUEBEC'S CHARTER OF HUMAN RIGHTS AND FREEDOMS

- **Section 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, gender identity or expression, 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 exists where such a distinction, exclusion, or preference has the effect of nullifying or impairing such right.”
- **Section 46:** “Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical well-being.”

**CIVIL CODE OF QUÉBEC**

- **Article 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.”

**ACT RESPECTING LABOUR STANDARDS**

- **Section 81.19:** The employer has an obligation to provide a workplace free of psychological harassment:
  - “Every employee has a right to a work environment free from psychological harassment.
  - Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.”

Since January 1, 2019, the employer must “adopt and make available [...] a psychological harassment prevention and complaint processing policy that includes [...] a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.”

**Other legislation**

In general, violence and sexual assault are covered under the *Criminal Code*, which allows all victims to press charges. If victims experienced personal loss, they may bring proceedings under the *Civil Code of Québec*. Any person who is the victim of sexual violence or assault can also make use of the provisions of the *Crime Victims Compensation Act* and receive compensation related to the application of the Act administered by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST).

**CANADIAN HUMAN RIGHTS ACT**

For businesses under federal jurisdiction, the *Canadian Human Rights Act* provides, in section 14, that “[i]t is a discriminatory practice [...] to harass an individual on a prohibited ground of discrimination.” Prohibited grounds are listed in sections 3 and 14 (2) of this Act.



**CANADA LABOUR CODE**

The *Canada Labour Code* was amended in 2018<sup>1</sup> to include a definition of harassment at work and employer obligations. These amendments were made to Part II of the Code, which relates to occupational health and safety.

- **Section 122(1) Harassment and violence:** “Any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment[.]”
- **Section 122.1:** “The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.”
- **Paragraph 125(1)(c):** The employer must, “except as provided for in the regulations, investigate, record and report, in accordance with the regulations, all accidents, occurrences of harassment and violence, occupational illnesses and other hazardous occurrences known to the employer[.]”
- **Paragraph 125(1)(z.16):** The employer must “take the prescribed measures to prevent and protect against harassment and violence in the work place, respond to occurrences of harassment and violence in the work place and offer support to employees affected by harassment and violence in the work place[.]”

**CANADA OCCUPATIONAL HEALTH AND SAFETY REGULATIONS**

The *Canada Occupational Health and Safety Regulations* provide, in section 20.3 (a), for the employer’s obligation “to provide a safe, healthy and violence-free work place”. As of January 1, 2021, Part XX on violence at work will be replaced by the *Work Place Harassment and Violence Prevention Regulations*. The Regulations set out a number of employer obligations. Below are some of said obligations:

- **Section 8:** “An employer and the applicable partner must jointly identify the risk factors, internal and external to the work place, that contribute to harassment and violence in the work place [...].”
- **Section 9:** “Within six months after the risk factors are identified under section 8, an employer and the applicable partner must jointly
  - (a) develop preventive measures that, to the extent feasible,
    - (i) mitigate the risk of harassment and violence in the work place, and
    - (ii) neither create nor increase the risk of harassment and violence in the work place;

- (b) develop an implementation plan for the preventive measures; and
- (c) implement the preventive measures in accordance with the implementation plan.”

- **Subsection 10(1):** “An employer and the applicable partner must jointly develop a work place harassment and violence prevention policy.”<sup>2</sup>
- **Subsection 12(1):** “An employer and the applicable partner must jointly develop or identify the training on work place harassment and violence that is to be provided to employees, the employer and the designated recipient.”
- **Section 13:** “An employer must make available to employees information respecting the medical, psychological or other support services that are available within their geographical area.”



## Employee obligations

- **Section 49 of the Act respecting occupational health and safety:** “A worker must [...] take the necessary measures to ensure his health, safety or physical well-being [and] see that he does not endanger the health, safety or physical well-being of other persons [...]”
- **Article 2088 of the Civil Code of Québec:** “The employee is bound not only to perform his work with prudence and diligence, but also to act faithfully and honestly and not use any confidential information he obtains in the performance or in the course of his work.”

**Obligation of civility:** Workers are required to act with civility in their relationships with both their superiors and their colleagues. This obligation is not provided for in legislation, but it has been developed in doctrine and case law. Under this obligation of civility, employees must conduct themselves with politeness appropriate to the workplace, refrain from bringing about interpersonal conflicts, and strive to maintain harmonious working relationships.

### THE FIVE RULES OF CIVILITY

Respect ◦ Politeness ◦ Courtesy ◦ Co-operation ◦ Manners

1. These amendments will come into force on January 1, 2021.
2. Note that a number of paragraphs contain elements that the policy must include.



## Methods for Managing Disputes



### Informal procedures

The following are alternative methods for managing disputes. In these types of interventions, those involved take active roles in seeking out solutions, which is not the case during formal procedures.

#### INDIVIDUAL ACTION

- Taking individual action involves personally approaching the other person to resolve the dispute. This step can be carried out verbally or in writing.
- Some conflicts stem from communication problems. Clarifications could resolve conflicts quickly and effectively.
- To be able to take individual action, individuals may need “coaching” and assistance. The person assisting individuals can, for example, offer them a great deal of support.
- This approach is effective and should be encouraged. Moreover, it allows for resolving the conflict without a third party, minimizes the number of individuals involved, and fosters communication.

#### INTERVENTION BY A MANAGER OR THE UNION

- The parties can ask for assistance from a representative of the employer (ideally the immediate supervisor) and the union to obtain advice. They may also ask that one of the representatives get involved to resolve the dispute.

#### THIRD-PARTY MEDIATION

- Some situations are quite complex and require intervention from a neutral and impartial third party. In such cases, it is preferable to use a qualified mediator.
- A mediator is a neutral and impartial third party whose goal is to help the parties identify their interests and needs and find solutions that are mutually satisfactory.
- The mediator ensures that effective communication takes place between the parties. The process is confidential and flexible. It allows for avoiding the high human and financial costs of an investigation and prevents an unnecessary waste of time. Mediation also allows for improving communication and future



relations, and ensures a greater level of confidentiality. It allows parties to directly share their experiences in a respectful manner. In this way, those involved, especially the victim, have a greater chance of feeling as though they are being heard and acknowledged and, thus, of feeling satisfied with the complaint process.

- The use of mediation should never be mandatory or compromise the right to any other recourse. Finally, mediation can also be considered after an investigation report is filed following a harassment complaint.



## Formal procedures

### GRIEVANCES

- Recourse for employees under the collective agreement consists of grievances; grievance arbitrators have the authority to order remedies.
- However, most situations are resolved without needing to be brought before an arbitrator. It is important to note that it is very difficult to demonstrate the five criteria in the *Act respecting labour standards* and that very few cases are allowed by arbitrators.
- Even if a grievance is filed, you can still go through the mediation process at any time.

### FORMAL COMPLAINTS VIA THE COMPLAINT MECHANISM IN THE PREVENTION POLICY

- Under section 81.19 of the *Act respecting labour standards*, your employer has the obligation to adopt and make available a psychological and sexual harassment policy<sup>1</sup> and a mechanism for processing complaints that allows for managing disputes.
- The mechanism for processing complaints can provide the option of going to mediation to put an end to the situation of conflict, incivility, violence, or harassment.

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1. This same obligation will apply for businesses and organizations under federal jurisdiction starting in January 2021.



## Recourse in Matters of Violence or Harassment at Work



### In cases of employment injury

According to section 2 of the *Act respecting industrial accidents and occupational diseases*, an employment injury “means an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation.” It is important to specify that such an injury can arise from violence or harassment at work and that the following recourse is available:

#### THE COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL (CNESST)

- You can submit an application for indemnities with the CNESST.
  - To receive compensation from the CNESST, victims of violence or harassment must demonstrate that they have experienced an employment injury—either an industrial accident or an occupational disease. Generally, cases of violence or harassment are indemnified on the basis of the industrial accident.
  - The *Act respecting industrial accidents and occupational diseases* defines the concept of “industrial accident” in the following way in section 2:
    - “a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him.”
- If your employment injury is recognized, you may receive, for example:
  - an income replacement indemnity, in the event of loss of income;
  - reimbursement of expenses associated with services provided by health care professionals, medication, etc.
- **You have six months from the last occurrence to submit an application with the CNESST.**
- Your union representative can assist you with appropriately completing the required form.





## GRIEVANCE

- You must also file a grievance since the arbitrator and the CNESST or the Administrative Labour Tribunal have different roles and order powers. Unlike the CNESST or the Administrative Labour Tribunal, an arbitrator may, in particular, order the employer to implement specific measures to put an end to the psychological harassment. In contrast, if the psychological harassment causes an employment injury, only the CNESST can order indemnities to compensate you for this period.
  - You have **two years** from the last occurrence of psychological or sexual harassment to file a grievance.

## When there is no employment injury

### GRIEVANCES

Recourse for employees under the collective agreement consists of grievances; grievance arbitrators have the authority to order remedies.

- Given that section 123.15 of the *Act respecting labour standards* grants various powers to the grievance arbitrator (see the next page), it is important to file a grievance.
  - You have **two years** from the last occurrence of psychological or sexual harassment to file a grievance.

**FILING GRIEVANCES**

grievances allow for protecting the rights of the alleged victim of violence or harassment, because they are the only recourse for unionized employees when an employment injury has not occurred. They also allow for reporting a problematic situation to the employer. However, whether there is a resulting employment injury or not, we encourage you to file the grievance as quickly as possible to ensure that recourse remains available. A grievance can always be withdrawn if it has no grounds or if there is a satisfactory agreement that allows for resolving the situation. It is always possible, even after filing a grievance, to use various alternative methods of managing disputes to try to resolve the problematic situation. These often have the advantage of more quickly putting an end to the situation. To learn more, see INFORMATION SHEET 5: *Methods for Managing Disputes*.

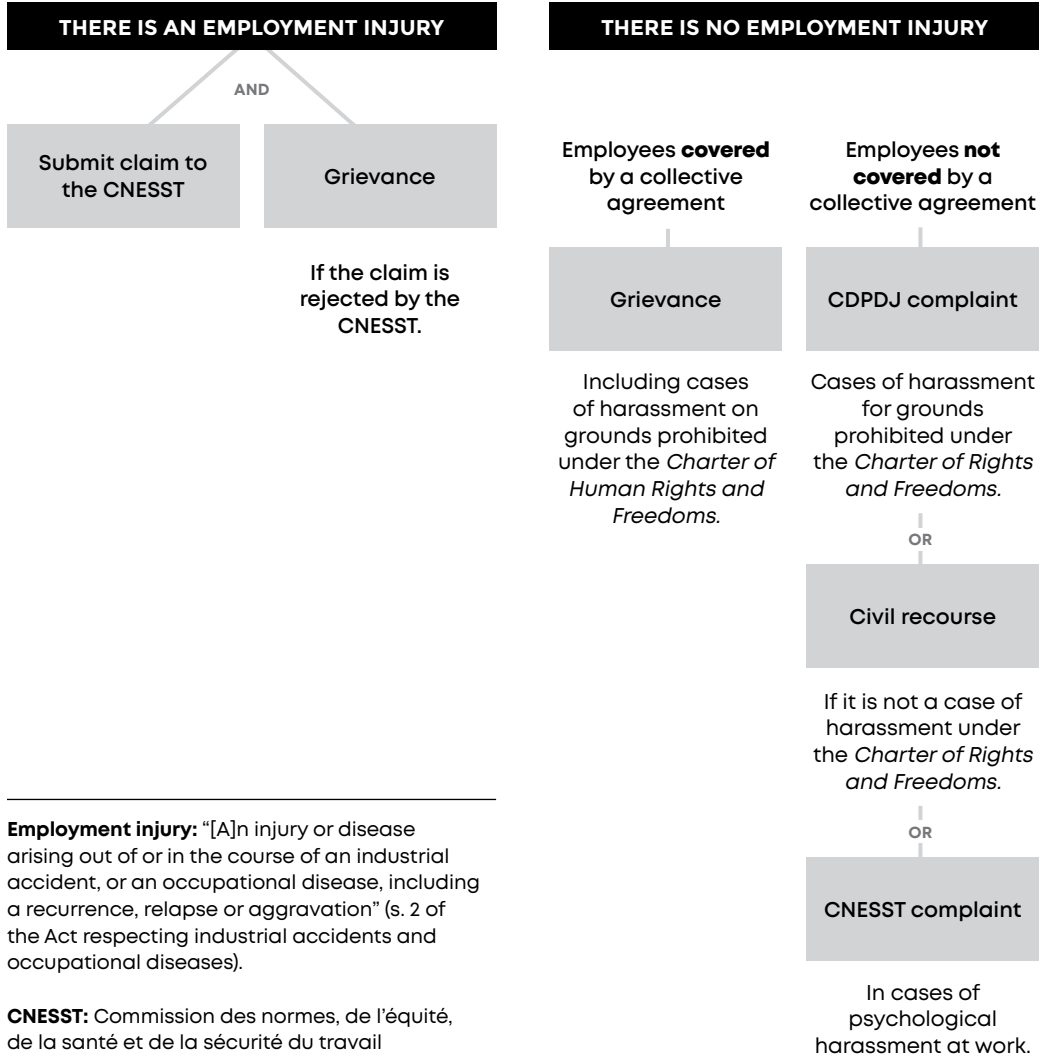
Section 123.15 provides grievance arbitrators with the following powers:

- “(1) ordering the employer to reinstate the employee;
- (2) ordering the employer to pay the employee an indemnity up to a maximum equivalent to wages lost;
- (3) ordering the employer to take reasonable action to put a stop to the harassment;
- (4) ordering the employer to pay punitive and moral damages to the employee;
- (5) ordering the employer to pay the employee an indemnity for loss of employment;
- (6) ordering the employer to pay for the psychological support needed by the employee for a reasonable period of time determined by the Tribunal;
- (7) ordering the modification of the disciplinary record of the employee.”

However, pursuant to section 123.16 of the *Act respecting labour standards*, “paragraphs 2, 4, and 6 do not apply [...] [when the person who was harassed has] an employment injury within the meaning of the *Act respecting industrial accidents and occupational diseases* that results from psychological harassment.”



RECOURSE AGAINST THE EMPLOYER IN CASES OF PSYCHOLOGICAL HARASSMENT



**Employment injury:** “[A]n injury or disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation” (s. 2 of the Act respecting industrial accidents and occupational diseases).

**CNESST:** Commission des normes, de l'équité, de la santé et de la sécurité du travail

**CDPDJ:** Commission des droits de la personne et des droits de la jeunesse



## Right of Refusal

Pursuant to section 12 of the *Act respecting occupational health and safety*, “[a] worker has a right to refuse to perform particular work if he has reasonable grounds to believe that the performance of that work would expose him to danger to his health, safety or physical well-being, or would expose another person to a similar danger.”

Although, according to the *Act respecting occupational health and safety*, the word “health” includes both physical and psychological health, it remains no less complicated to assert this right for a situation of violence or harassment at work. The challenge of this form of recourse is to be able to establish the existence of genuine danger to psychological health. An important concept involved in the right of refusal is “danger,” which should not be confused with the concept of “risk.”

### DANGER VS. RISK

- Danger is more imminent than risk. It involves a real threat, while risk refers to an event that, while possible, is less certain. The threat must be more than potential and must consist of more than simple fear, concern, or apprehension.<sup>1</sup>



## Burden of proof

The burden of proof is on the alleged victim of violence or harassment at work who wants the situation to be recognized. This means that the individual must show, using concrete facts (date, location, verbal comments, gestures, conduct), that violence or harassment was experienced in the course of the individual’s work. However, while the burden of proof is on alleged victims, they are not left to their own devices when faced with this task that may seem difficult at first glance. The role of the union is to support such individuals and help them gather such evidence.



## Frivolous or bad faith complaints

A complaint is considered frivolous when the allegations are unreliable and trivial.<sup>2</sup> A harassment complaint is said to be frivolous when the alleged conduct, verbal comments, actions, or gestures are objectively trivial.

Complaints are made in bad faith when they are filed by individuals who know in advance that they are unfounded and who have questionable intentions. This is the

case if individuals exaggerate or misrepresent facts. Such complaints can lead to disciplinary measures from the employer.

For example, an individual's performance is unsatisfactory and the individual is the subject of a performance management process undertaken in a respectful manner by the manager, who provides the employee with ways to improve. The employee may still feel cornered and in a difficult position. If this person were to file a harassment complaint about the manager in order to get out of this uncomfortable situation, it would consist of a complaint in bad faith.



## Confidentiality and support

Confidentiality does not mean that those involved are required to be completely silent. Of course, it is desirable not to disclose the problematic situation in public or to discuss the facts related to the situation with colleagues. It is entirely appropriate to seek assistance from a professional via the employee assistance program. Moreover, it would be inhumane to ask those directly involved not to discuss the situation and their distress with a trusted person in the workplace (a co-worker or immediate supervisor). Naturally, it is important that this trusted person remains very discreet.

Close colleagues will see that those involved in a problematic situation are preoccupied and seem a little off. Those involved may each discuss how they feel about the difficult situation with another person in whom they have complete confidence so that they can receive support. Of course, such individuals should not aim to try to form alliances when seeking out such support.

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1. *Syndicat des agents de la paix en services correctionnels du Québec et Québec (Ministère de la Sécurité publique) (Détenition)*, 2007 QCCLP 4912. [Consulted in April 2020].
  2. Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). 2016. "Act respecting labour standards, section 106." CNESST interpretation. <https://www.cnt.gouv.qc.ca/en/in-case-of/complaint-related-to-wages/labour-standards/section-106/index.html>.





Make it **stop.**

[makeitstop.ca](http://makeitstop.ca)