Deconstructing Industry-Based Prejudices: Sexual Harassment in 2017

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The Commission de la construction du Québec announced the implementation of a sexual harassment and misconduct whistleblower hotline on construction sites.

Recently, the Commission de la construction du Québec (the "CCQ"), supported by construction industry unions and employer associations, announced the implementation of a sexual harassment and misconduct whistleblower hotline on construction sites. As Mrs. Diane Lemieux, CEO of the CCQ stated in her speech: [Translation] "I think that, in the present context, it was wise to make this decision. Not to wait until 22 newspaper articles are published before starting to organize, but rather to take the bull by the horns".

The presence of sexual harassment in the workplace is troubling. It has caused employers to reflect on how this issue is being dealt with in their own businesses, regardless of the field in which they operate. Not only does this harassment affect individual employees who are being victimized, it also has an impact on other members of the workforce as well as the companies themselves. The image, reputation and balance sheet of an employer can be seriously impacted by harassment allegations, placing the employer in a particularly challenging situation.

Although the Act respecting labour relations, vocational training and workforce management in the construction industry as well as the relevant collective agreements do not have much to say about what duties and liabilities employers have with regard to sexual harassment, the provisions on psychological harassment in the Act respecting labour standards do nevertheless apply to the industry. Consequently, construction industry employers, like all other employers in Québec, must be proactive and forward-looking, particularly if they are to combat the prejudices connected, rightly or wrongly, with the construction industry, and to prevent and properly manage any harassment or misconduct of a sexual nature that may occur on a construction site.

In these circumstances, it is essential for employers to question whether their current workplace policies are sufficient, and whether the right tools, means and resources are available to allow these policies to be effective and reach their objectives on a regular basis.

Employers who are proactive and who understand the serious consequences that can result from cases of sexual harassment, often question what else can be done to prevent harassment and what other measures can be taken to intervene effectively and efficiently when cases of harassment do occur.

As is often the case in the area of labour law, acting quickly and proactively can only have a positive effect. This is true not only in terms of raising the general level of awareness of employees and other individuals in the work environment, but also when it comes to effectively communicating the company's message and address the harassment at issue.

The following questions and issues are relevant when considering what measures can be implemented, in relatively short order, to address this issue.

As a first step, is it appropriate to adopt or review policies, so as to provide tools that could assist those who are responsible for implementing workplace policies? In this process, it may be appropriate to consider a policy that reinforces unequivocally the notion that all instances of sexual harassment will be treated seriously, regardless of the position held by the alleged harasser.

Certain policies already provide for a reporting procedure for individuals who witness misconduct. In the case of drug and alcohol policies, witnesses to misconduct are often required to immediately report a violation of company policy. Would imposing such a requirement on those who witness harassment lead to the employer being made immediately aware of this issue?

Should an investigation be launched as soon as allegations of harassment are brought to the employer's attention, regardless of the means of notification and even in the absence of an official complaint?

In addition, should the way the investigation is conducted and how its findings are communicated to various parties involved in the investigation be reconsidered? Adjustments in this regard can be made to an existing policy.

Employers should ensure that their policies are readily available, whether by posting a copy in a location readily accessible to employees on the worksite, by providing a presentation on sexual harassment at an introductory meeting on the construction site, or by way of a weekly reminder by a person in authority on the site, so as to ensure that employees know where a paper copy of the policy can be found. In our view, disclosing and communicating employment policies and procedures is vital.

Similarly, should employers consider the introduction of mandatory and personalized training for all managers to demystify the notion of sexual harassment, as well as make it a topic in the induction training of new employees hired to work for the company or on a construction site? And what about offering training on acceptable conduct in the workplace generally?

One thing is certain – In light of recent events, the construction industry will be affected and will have to make sure that its methods and practices keep pace with social change. The CCQ has already designed a training program called Gestion au travail au sein d'une équipe mixte, with a view to altering certain practices on construction sites. In our opinion, it would also now be appropriate for construction industry employers in Québec to consider implementing personalized training programs dealing specifically with sexual harassment. Employers that have already adopted such practices could consider increasing the frequency of harassment training sessions made available to employees.

Similarly, Québec employers will have to place more importance on (and possibly invest more resources in) determining the roles of the various stakeholders identified in the policy as well as the coordination that will take place between them. Victims of harassment and those who are witnesses to it must know whom to turn to, whether it be the employer's human resources department or a workplace health and safety committee. In our view, it is also necessary for employers to ensure that the designated employer representatives who handle harassment issues be adequately trained and know how to handle concerns that are brought to their attention. In addition, we believe that a sufficient number of these employer representatives must be female.

In the era of social media, where harassment allegations are often played out in public rather than in a courtroom, it is essential to be proactive rather than reactive.

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