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# **The Employment Law Roundup: Psychological Harassment and Constructive Dismissal**

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January 16, 2012**

***Psychological Harassment and Constructive Dismissal by Sarah Vokey  
Strizzi v. Curzons Management Associates Inc., 2011 ONSC 4292***

The recent case of *Strizzi v. Curzons Management Associates Inc., 2011 ONSC 4292* provides us with a recent example that psychological harassment and bullying can be grounds for constructive dismissal.

Mr. Strizzi was hired to work at Curzons Carlingwood Club (“Curzons”), a health and fitness club located in Ottawa, in October 1997. He quickly rose from the position of sales person to that of General Manager and was often required to work very long hours. The Court described Mr. Strizzi as “a loyal, hard-working and committed GM for the club”. Furthermore, he was described as “a good manager, a good communicator, an effective mentor, a great motivator and someone with whom [his staff] enjoyed working”. Mr. Strizzi found one of the owners of the club, Mr. Cardillo, difficult to work with.

By 2003, the club began showing its age, the competition in the area was growing and members became upset as a result of accounting issues. Mr. Strizzi raised these concerns with Head Office and warned that the Club was facing difficulties maintaining its members on account of the problems that had been identified. Mr. Strizzi had further concerns with the varying payment structures that were implemented and the lack of support from Head Office. Head Office did not address Mr. Strizzi’s concerns or the issues that he raised. The club’s profitability began to suffer.

In March 2003, Mr. Strizzi returned from vacation to learn that his sister-in-law had been diagnosed with MS. While he was visiting her that evening, Mr. Cardillo called Mr. Strizzi at the club and became very angry when he could not reach him. He later called Mr. Strizzi at home and, during the phone call, he called him names

and told him that he was irresponsible for not being at the club during the evening when he had been on vacation the previous week. Mr. Cardillo accused Mr. Strizzi of not obtaining permission to take vacation although he had obtained approval from the other owner of the club. Mr. Strizzi and his wife were in tears following the phone call and Mr. Strizzi felt humiliated because of the way that he had been spoken to.

In August 2003, Mr. Strizzi travelled to Toronto for a monthly launch meeting. When he arrived, he realized that the meeting had been cancelled by way of a memo that had not been sent until after his flight to Toronto had departed. Mr. Cardillo blamed Mr. Strizzi for wasting time and money travelling to the meeting. In September 2003, Mr. Strizzi attempted to book a flight for the October launch meeting, which was the following day. It was Mr. Strizzi's practice to wait until the day before a meeting to book the ticket; however, in this case, Tango had just declared bankruptcy and Mr. Strizzi realized that the cost of the Air Canada ticket was going to be very expensive. He phoned Mr. Cardillo to speak with him about the ticket.

Mr. Cardillo became very angry at the beginning of the conversation when he learned that Mr. Strizzi would not be coming to the monthly launch meeting. Mr. Cardillo called Mr. Strizzi "every name in the book", threatened to get lawyers involved, blamed Mr. Strizzi for another employee's resignation, accused Mr. Strizzi of taking a two-week vacation without authorization, of causing financial damage to the club and of generally "screwing up". Although Mr. Strizzi had no intention of resigning prior to this phone call, he responded to Mr. Cardillo's unfounded accusations by saying that he could no longer work for Mr. Cardillo. This further angered Mr. Cardillo who responded with further verbal attacks and threats including telling Mr. Strizzi that he would not pay him wages that were owed to him and would not reimburse him for the last flight he took for a monthly

launch meeting. Mr. Cardillo then dictated the terms upon which he would consider paying the amounts owing to Mr. Strizzi, including that Mr. Strizzi was to be at the meeting the following day, even if he had to walk. The argument between the men continued and Mr. Cardillo continued “berating” Mr. Strizzi until the conversation ended. Mr. Strizzi claimed that he had been constructively dismissed during the telephone conversation.

The Court noted:

The most serious work-related problem that Strizzi had, however, was in having to deal with Cardillo who was, to put it bluntly, a bully. Strizzi had experienced Cardillo’s unreasonableness and aggressivity during the telephone call in March 2003 which had left Strizzi and his wife in tears. He had again experienced it during the interchange at the beginning of September in regard to the September launch meeting. Cardillo’s behaviour during the opening few minutes of the September 30, 2003 telephone conversation brought home to Strizzi the impossibility of his continuing to work in an environment where his employer yelled at him, called him all kinds of names, falsely accused him of ruining his business, refused to have a dialogue or engage in reasonable, civil conversation, told him repeatedly how useless he was, made threats, and generally treated Strizzo in a way that no employee should be subjected to.

Although Curzon’s argued that Mr. Strizzi had resigned, the Court held that he had been constructively dismissed and awarded him seven months reasonable notice as well as \$10,000 in outstanding wages for the two months prior to his constructive dismissal. The Court concluded its decision on the constructive dismissal issue by stating:

Although disagreements, disappointment, criticism, disciplinary action, and difficult – even heated – exchanges are common and expected aspects of employment relationships, and anger and frustration may be expressed at those times, employers do not have the right to harass, humiliate, belittle and berate

employees as they go about their responsibility of managing and supervising them. They do not have the right to yell and swear at employees and call them “every name in the book”. When employers carry matters to this extreme, they risk the employee reasonably concluding that continued employment is intolerable.

***What does this mean for employers?***

1. *One serious incident of psychological harassment may be sufficient to successfully claim constructive dismissal* – Although Mr. Strizzi had difficulties with Mr. Cardillo prior to their last telephone conversation, the Court was content to base its finding of constructive dismissal largely on the last telephone conversation that occurred between the parties. Although in most cases psychological harassment takes the form of a course of conduct, one incident, if serious enough, may be sufficient for a harassed employee to treat his or her employment as constructively dismissed.
2. *Ensure that your policies speak to psychological harassment specifically* – Not only is this a requirement under the *Occupational Health and Safety Act* in Ontario, but it is also an effective way to communicate the behavioural standards and expectations in your workplace. While there will occasionally be situations in the workplace when employees disagree with each other, a policy that provides employees with a workable definition and examples of both acceptable behaviours as well as those which cross the line, will go a long way in establishing a behavioural standard that most employees understand and can adhere to.