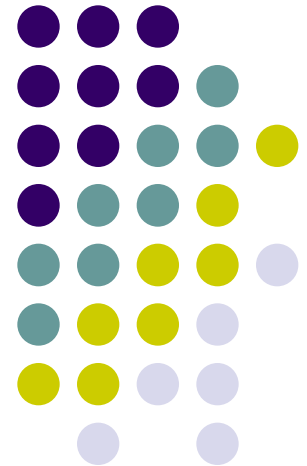


Workplace violence and harassment : legal issues relating to prevention and compensation

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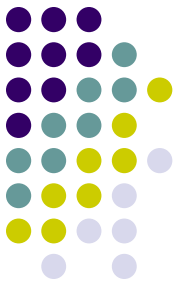
- Financing:

FQRSC, SSHRC

Presentation in two parts



- Legislation governing prevention of harassment and violence in the workplace
- Access to compensation for disability attributable to psychological harassment in the workplace under workers' compensation legislation



Legislation for prevention



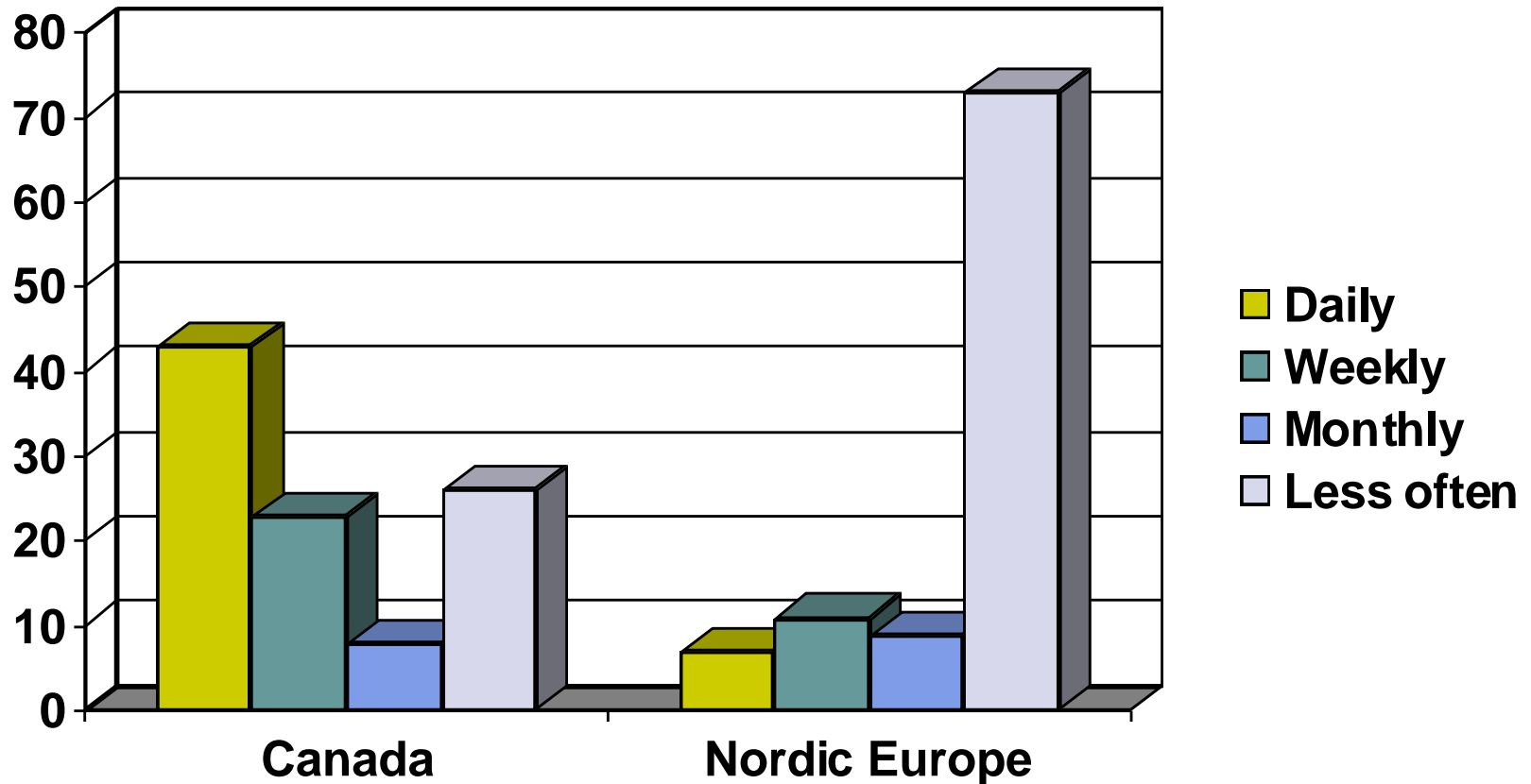
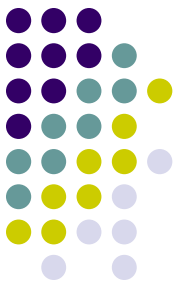
- Legislation examined
 - General legislation applied to situations of workplace violence
 - Specific legislation targeting workplace violence
 - Risk of physical aggression
 - Psychological harassment

Occupational violence: an OHS challenge



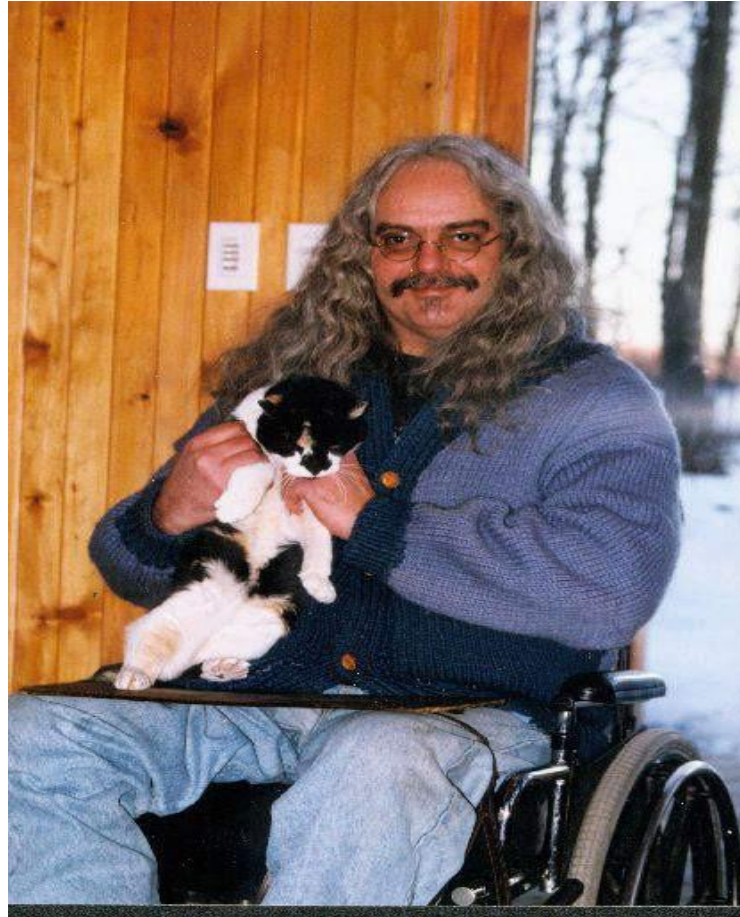
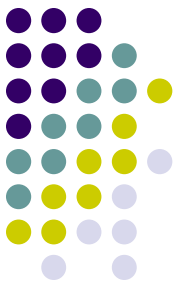
- Occupational Violence is a problem around the world
 - Di Martino and Chappell, 2006
- Workplace violent crime
 - In the U.S. in 2005: 792 workplace deaths attributable to workplace violence
 - NIOSH
 - In Canada in 2004: 17% of violent (criminal) victimization occurred at work.
 - 12% of those incidents involved a co-worker aggressor
 - De Léséleuc, 2004

Frequency of incidents of physical violence to personal support workers in long term care facilities

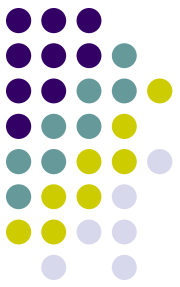


Banerjee et al, 2008

So maybe Canadian residents of facilities are nastier than Nordic residents?



Maybe it's not the job itself but the working conditions (Banerjee et al, 2008)

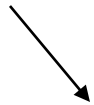


	Canada	Nordic countries
Working short staffed on a daily basis	44%	15%
Able to discuss difficulties with colleagues most of the time	22%	54%
Report almost always feeling mental exhaustion at the end of the day	44%	11%

Does policy contribute to the level of violence seen in Canada?



- Cost control measures in Canada:
 - Cutbacks in budgets of health-care facilities



- Inadequate staffing
- Increased absence
- Increased understaffing
- The blue line on the diaper

- Policy questions that arise:
 - Do OHS mechanisms exist to ensure enforcement of safe staffing levels?
 - Are they implemented and enforced?
 - Are there mandatory risk assessments done?
 - If so, do they involve consultation of workers?

Legislation for prevention of workplace violence



- General duty clauses
- Regulations explicitly targeting violence in the form of physical or verbal aggression
 - Nova Scotia, 1996
 - British Columbia, 1998
 - Canada OHS Regulations: *Violence prevention in the Workplace*, 2008
 - Bullying included as a possible contributor to workplace violence
- Regulations targeting working alone

Prevention of workplace Psychological harassment/Mobbing/Bullying

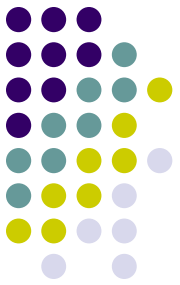


- General legislation :
 - general duty/risk assessment clauses in OHS legislation
 - protection against unjust dismissal
 - damages for negligence
- Specific legislation on psychological harassment

Psychological harassment: legislative initiatives



- Legislation adopted in
 - Sweden, 1993: Ordinance on victimization at work.
 - Finland, 2002: «violence, harassment and other inappropriate treatment»
 - France, 2002: penal provisions in labour Code, governing moral harassment
 - Belgium, 2002: «mandatory prevention organisation»
 - Québec, June 1, 2004: employer responsibility for providing a workplace free of psychological harassment
 - South Australia, 2005: OHSW legislation: penal provisions for failing to adequately manage workplace bullying
 - Saskatchewan, Oct. 1, 2007: health and safety administrative tribunal: psychological harassment



What's in a definition?

- Broadly formulated description of proscribed behaviour provides for easier intervention by inspectorates:
 - Finland: legislation governs «violence, harassment and other inappropriate treatment»

Québec Legislation



*An Act to amend the Act respecting
Labour Standards, 2002 S.Q. c. 80
(LSA)*

<http://www.cnt.gouv.qc.ca/en/lois/normes/normes/harcelement.asp>

<http://www.cnt.gouv.qc.ca/en/lois/normes/normes/recours/index.asp>



Psychological Harassment:

legislative definition (art. 81.18 (1) LSA)



«Any 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.

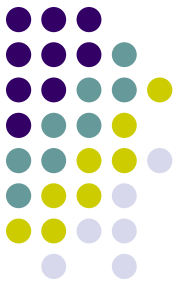
...

Psychological Harassment: legislative definition (art. 81.18 (1) LSA)



...

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



LSA : New principles

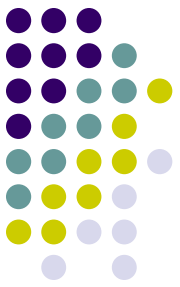
- Legislative recognition of the phenomenon of psychological harassment, and new rights and obligations
- Introduction of legal remedies for victims
- Legislation has no effect on psychological disability compensable under workers' compensation legislation.
 - **Adopted in December 2002; in force since June 1st, 2004**



Modifications to the Labour Standards Act:

- applicable to all employees covered by provincial legislation, whether unionized or not
 - provisions integrated into collective agreements by the Act
- Defines psychological harassment
 - Establishes the right to a workplace free from harassment
 - Defines employer obligations
 - Includes diverse means of redress and time limits for lodging grievances
 - Claim filed with Commission des normes du travail or grievance if unionized.

Remedies include orders to the employer regarding: (s. 123.15 LSA)



- Reinstatement
- Reasonable action to put a stop to P.H.
- Indemnity for loss of employment
- Modification of disciplinary record
- Lost wages*
- Punitive and moral damages*
- Payment for psychological support*

Increased union responsibility



A complaint may be filed against a union if they fail to act fairly in refusing to file a grievance on the behalf of a victim of harassment. (s. 47.2 and 47.3 Labour Code)

- In determining whether to file a grievance on the behalf of a victim of harassment the union:
 - Can not act in an arbitrary or discriminatory way nor can it act in bad faith or negligently.

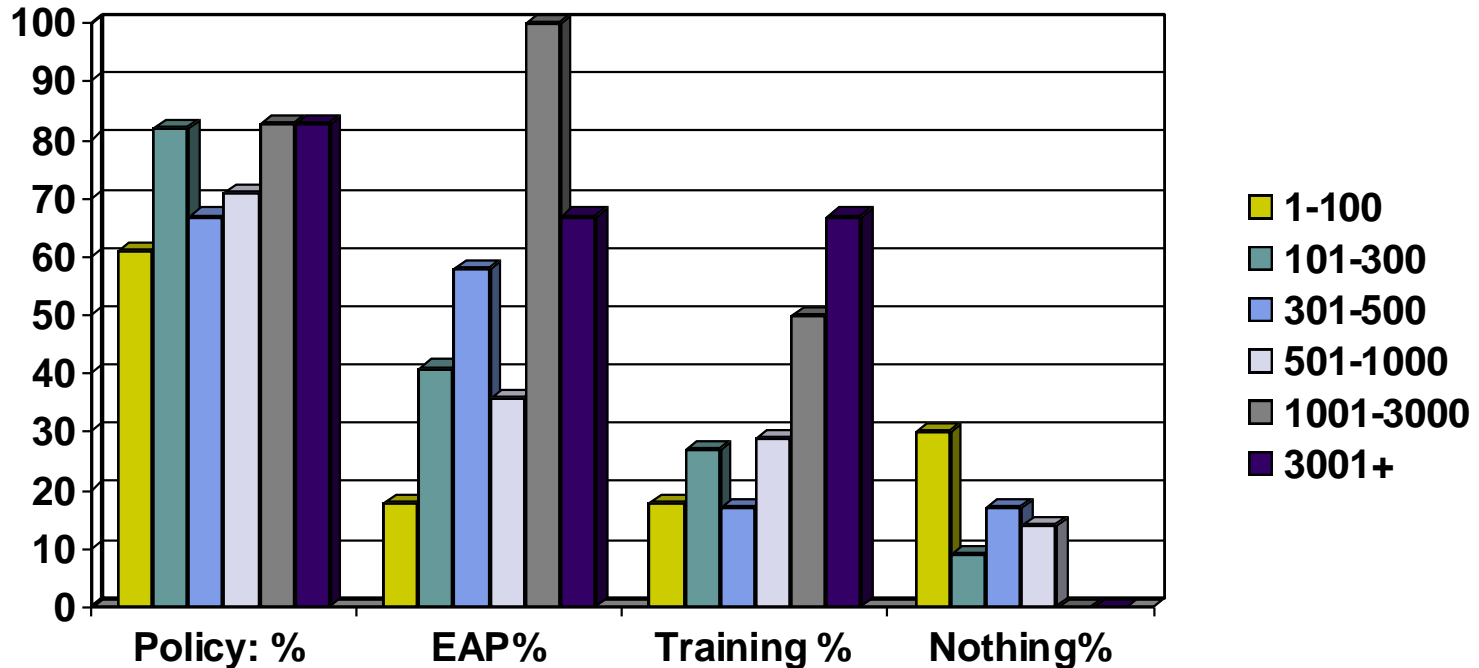
Between 2004-2007 the C.R.T. rendered more judgements on s. 47.3 than there were arbitration decisions on psychological harassment.

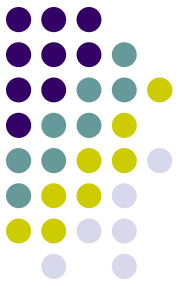
Harassment: how existence of legislation drives prevention



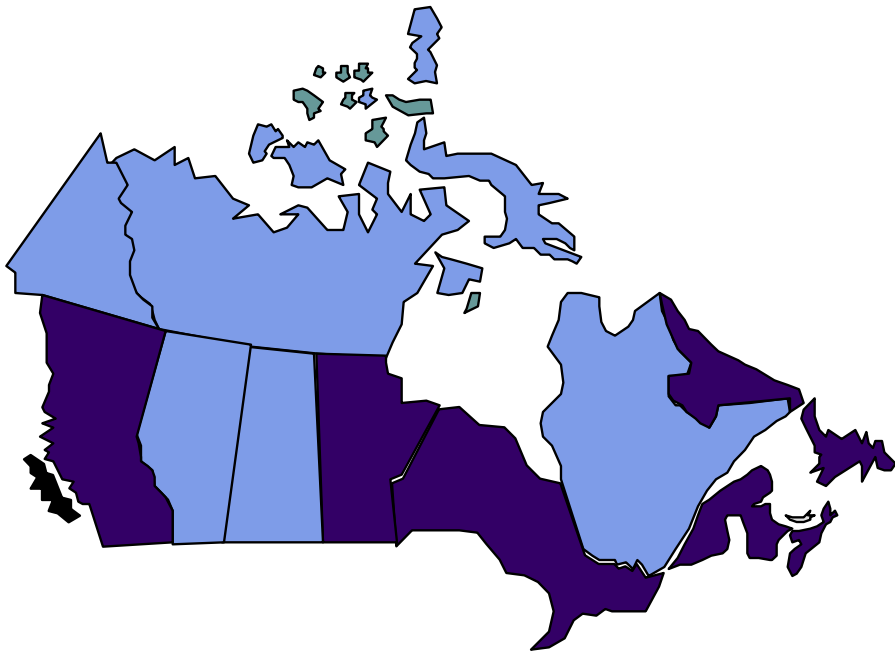
- Regardless of numbers of accepted claims, existence of legislation forces social partners to access information for prevention purposes
 - Employers responsible for prevention
 - Unions responsible for implementation of recourse for their members
 - SCFP/CUPE, 2008
 - Cox, 2008

Prevention strategies of employers according to the size of the unionized workforce (CUPE)



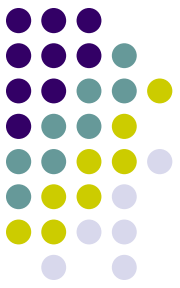


Compensation for mental health problems attributable to workplace stress in Canada



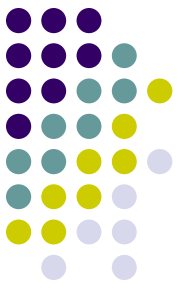
- All jurisdictions compensate for mental health problems attributable to acute stress
- Five jurisdictions compensate for mental health problems attributable to chronic stress
 - Yukon
 - Nunavut/North West Territories
 - Alberta
 - Saskatchewan
 - Québec

Workers' comp for mental health problems outside Québec



- In many provinces legislation explicitly excludes compensation for chronic stress:
 - Ontario, B.C., Manitoba, New Foundland, P.E.I., New Brunswick, Nova Scotia.
- When you look more closely the actual application of the case law is very variable, regardless of the wording of the exclusion.

Access to workers' compensation in Québec



- Employment injury
 - Industrial accident
 - Occupational disease
- In the case of harassment, it's not necessary to prove harassment, only the criteria for compensation for an employment injury



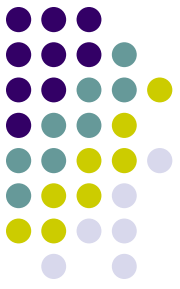
Mental health can be compromised by



Acutely stress situation

- A traumatic event :
 - Armed robbery, hostage taking
- Chronic stress: a series of banal events that cumulatively undermine mental health

Industrial accident: s. 2 (AIAOD)

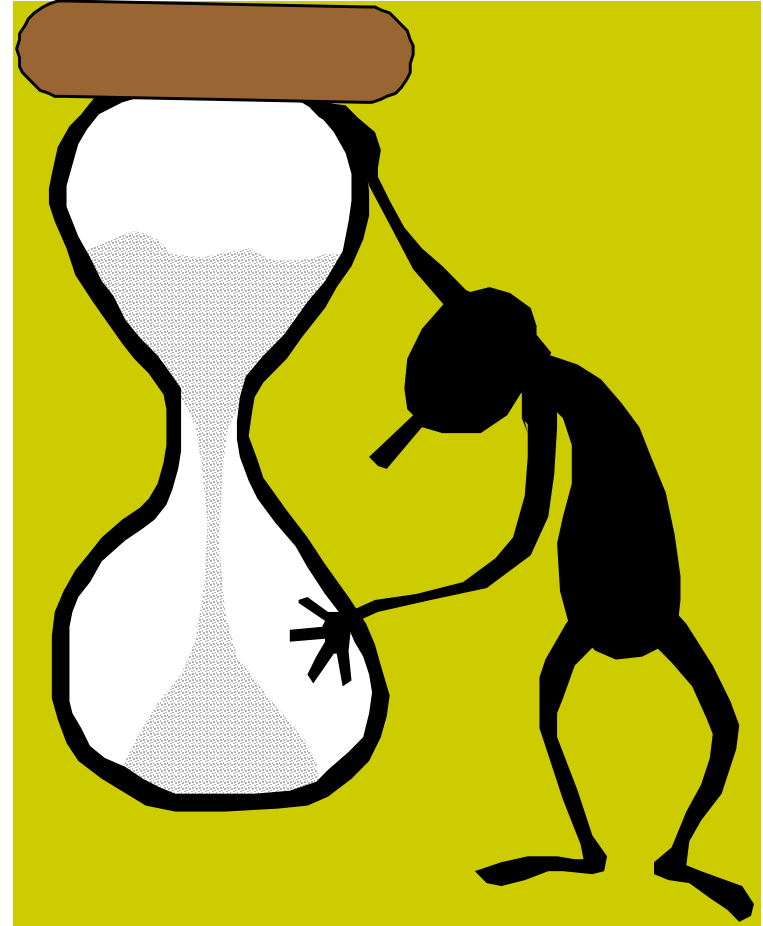


- «a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him»
- 91% of claims accepted by the CLP are considered illnesses attributable to an industrial accident.
- 9% are accepted as occupational disease claims.

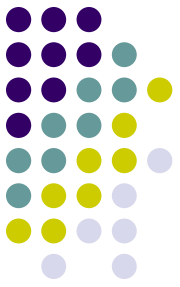
Majority of the case law CLP/CALP



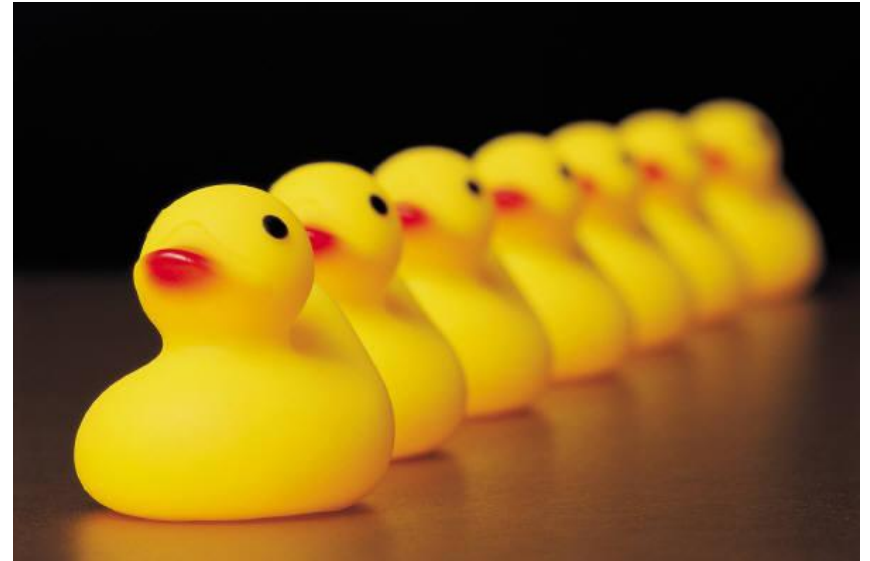
- «the accumulation of events arising out of or in the course of employment, which, considered individually may seem banal, can nonetheless, by their cumulative effect, become significant and meet the legislative requirement for a sudden and unforeseen event».



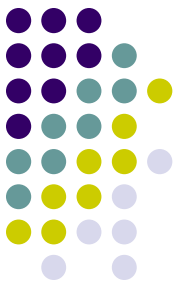
Chronic stress as work accident



- Necessary to demonstrate that the stressors, individually or cumulatively, go beyond the «normal» workplace stressors to which workers are exposed in the «modern» workplace.

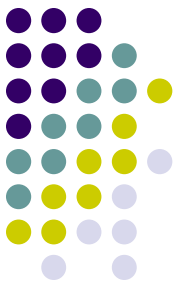


Compensation for health problems attributable to workplace violence: Québec (CSST) 2003-2006



- Physical problems
 - 2003-2006 acceptance rates have remained constant: between 93% and 95%
 - No increase in claims over the period
 - Average 1084 accepted since 2003
 - Psychological problems
 - 2003 - 2006 acceptance rates have fallen from 58% to 31%:
 - Reduction coincides with an increase in claims following adoption of psychological harassment legislation in 2004
 - Average 70 p.h. accepted since 2004
 - Average 11 s.h. accepted since 2004
- CSST, 2008

Portrait of the appeal tribunal decisions (CLP)

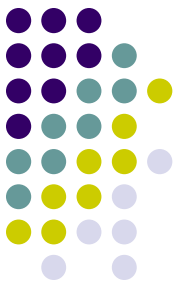




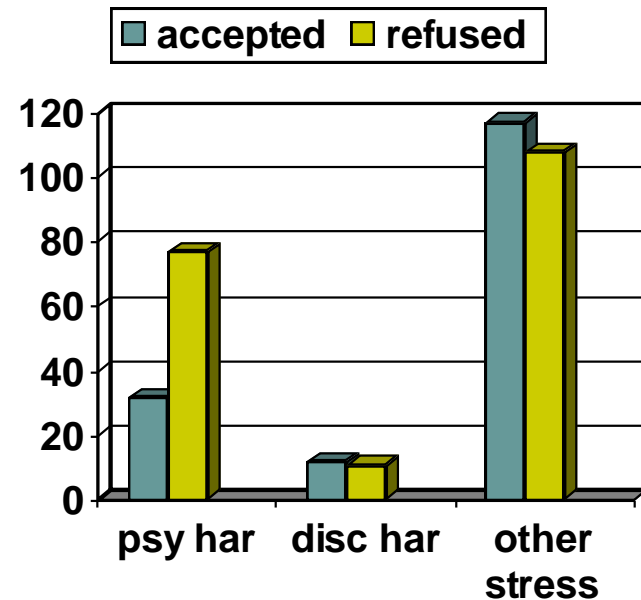
Methodology

- Analysis of 355* appeal decisions of the C.L.P. rendered between **04/1998 - 09/2002**.
- Analysis of 85 CLP decisions **2007-2008**
- Claims for mental health problems the worker attributes to workplace stress.
- 100% of decisions rendered.
- *Filemaker* database analysis (452 fields).
- Interested in gender differences.

Acceptance rate in appeal and source of stress: 357 cases (1998-2002)

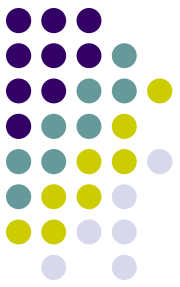


- Acceptance of claim for mental health problems in appeal:
 - 29% psychological harassment cases
 - 52% discriminatory harassment cases
 - 52% other stress claims

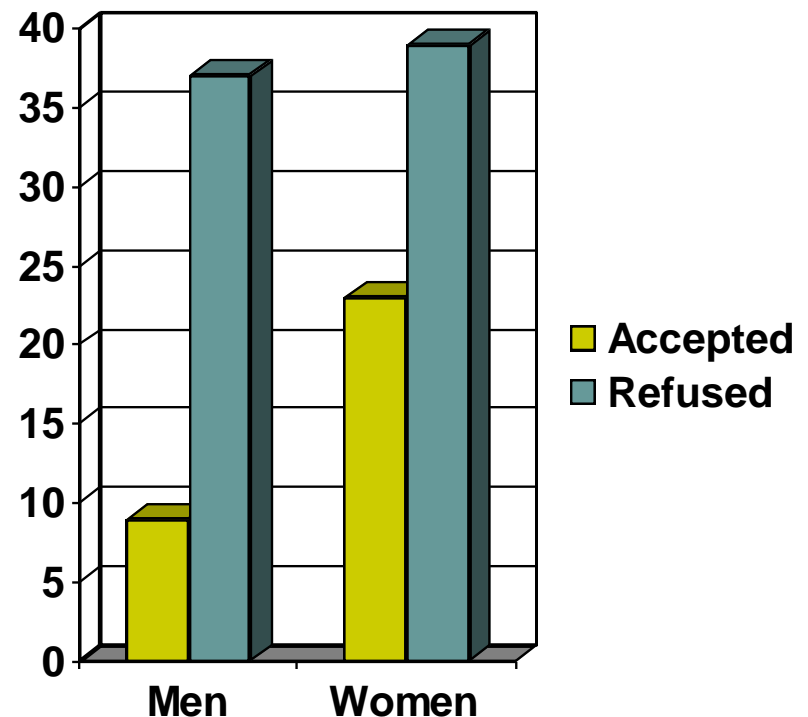


Lippel, *Pistes*, 2005

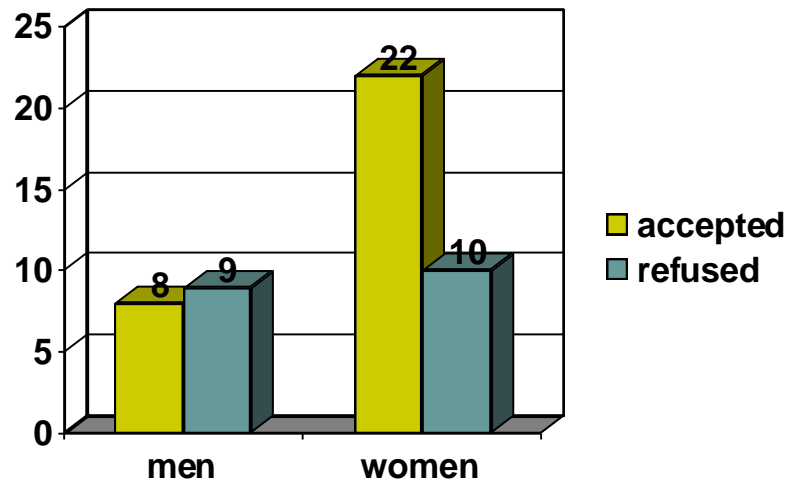
Psychological harassment acceptance and gender (1998-2002)



- Workers' compensation claims of men were more often rejected than those of women:
 - 20% of claims by men and 37% of claims by women were accepted by the CLP
 - Lippel, 2005, *Pistes*

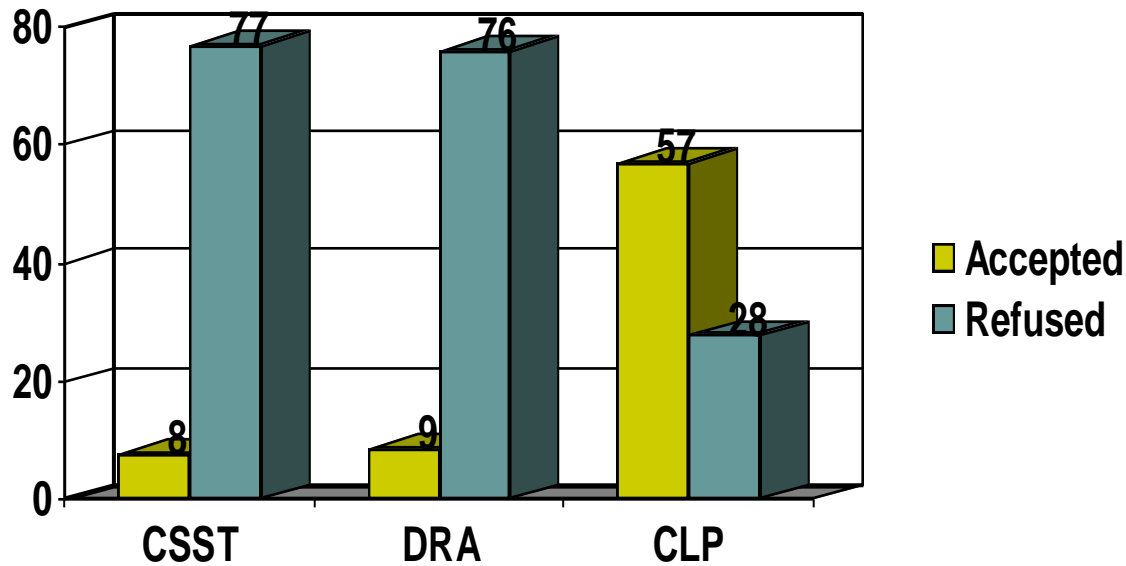
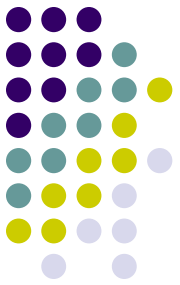


Psychological harassment acceptance and gender (2007-2008)

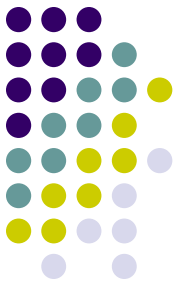


- Men are compensated in 47% of cases
- Women are compensated in 69% of cases
- Globally, 61% of psychological harassment cases are accepted.

Acceptance rates per level of decision for all mental health claims CLP: 2007-2008 (85 cases)



- The CSST accepted 9% of claims
- Review board accepted 11%
- The CLP accepted 67% of all claims for mental health problems



Conclusion

- Legislation on psychological harassment changes the way employers, unions and tribunals deal with issues raised by harassing behaviour in the workplace.
- Specific legislation and access to workers' compensation act as an incentive for education, training, policy implementation and prevention practices
- Legislation in itself does not guarantee adequate implementation.

For more information:

*International Journal of Law
and Psychiatry*, vol.30: 4-5,
2007

<http://www.pistes.uqam.ca/v7n3/articles/v7n3a13.htm>

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