

Psychological Safety and the Law in the Canadian Workplace

The Shain Reports



A dramatic legal evolution is transforming Canadian workplaces.

For the first time in Canadian history, employers are confronted with a legal duty to maintain not only a physically safe workplace, but also a *psychologically safe* work environment.

Previously, only egregious management actions that caused catastrophic psychological harm created risk of legal liability. Now, common workplace practices that create foreseeable risks of mental injury can lead to legal liability under certain circumstances:

- Chronic stress caused by work conditions.
- Excessive demands from supervisors and management.
- Unpaid overtime that can lead to mental harm.

Recent reports prepared by Dr. Martin Shain (University of Toronto) for the Mental Health Commission of Canada (MHCC) highlight these ongoing legal developments.

Shain defines a psychologically safe workplace as *“one in which every practical effort is made to avoid reasonably foreseeable injury to the mental health of employees.”*

The MHCC reports explain how Canadian courts and tribunals are:

- Increasingly intolerant of workplace factors that threaten psychological safety.
- Ordering management to change workplace habits that threaten employees.
- Imposing dramatically increased financial punishments for transgressions.

A “perfect storm” of liability for employers who fail to maintain a psychologically safe workplace is building strength in the proceedings of courts and tribunals in seven different Canadian legal contexts: human rights, labour law, employment contracts, employment standards, occupational health and safety, workers compensation, and torts and damages (common law).

The Shain reports are a compelling call to action for both employers and policy makers. They are a must-read for employers seeking to implement policies and practices that will help them comply with the law and protect their organizations from the brewing legal storm.

The Shain reports, ***Stress at Work, Mental Injury and the Law in Canada*** (2009) and ***Tracking the Perfect Legal Storm*** (2010) are available at: www.mentalhealthcommission.ca