



## **MY RIGHT TO PRIVACY HAS BEEN VIOLATED**

### **THE FACTS**

While helping lift an obese patient from her chair, a worker felt a fierce burning sensation and shooting pain in her back, on the left side, and experienced difficulty lifting her left arm. In May 2005 she was diagnosed with a cervicodorsal sprain which was consolidated in November 2006, the whole without any permanent physical or mental impairment or functional disabilities. The worker contested the decision and sought, in particular, to have the C.S.S.T recognize that the injury had not been consolidated and required further care and treatment and, incidentally, that she had suffered permanent impairment.

### **THE ISSUE**

The Commission des lésions professionnelles had to determine whether the documents filed as evidence were admissible and whether they could infringe the right to privacy. In the case at hand, the testimony of the psychologist as well as the expert report prepared in April 2009, at the employer's request, in order to determine the worker's state of health and her ability to work, had been filed.

### **THE DECISION**

The Commission des lésions professionnelles dismissed the worker's objection to the evidence, because it considered that the psychologist's expert report and testimony were relevant, that the infringement of the right to privacy was justified and that it did not bring the administration of justice into disrepute.

### **THE GROUNDS**

According to the Commission, the expert report and testimony of the psychologist were relevant, given that, according to the

doctors involved in the case, psychosocial factors could play a role in the chronicity of the injury.

As for the right to privacy, the Commission was of the opinion that the worker had implicitly waived her right to privacy by raising her physical condition before the tribunal. It added that the waiver of the right to privacy, as regards the worker's employment injury, included the consequences of her psychological condition on the matters she was contesting.

Even though the expert psychological report had been prepared within the scope of the employer's exercise of its right, as set forth in the collective agreement, to require such a report, and not pursuant to a right conferred in the *Act respecting industrial accidents and occupational diseases*, the expert report was admissible as evidence before the Commission.

#### **Reference**

*Bélisle v. CSSS de Gatineau*, Commission des lésions professionnelles (C.L.P.) Outaouais 304011-07-0611, July 24, 2009, decision rendered by Suzanne Séguin (2009 QCCLP 5141; [www.jugements.qc.ca](http://www.jugements.qc.ca))

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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