And now for something completely different: A tongue in cheek look at some serious legal issues

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Quite often the concept of what constitutes “the workplace” or “work-related activities” is relevant in Canada in determining whether an employer has liability for the acts of its employees. If, for example, an employee misbehaves on a work trip, can the employer be held liable? Can the employee be disciplined? This concept was stretched to its thinnest in a recent case in France when a French court was asked to decide whether or not an employer should be liable for compensation to the estate of an employee who died while on a work trip – while having sex with a complete stranger.

The facts are unforgettable. An unnamed male employee (whom we shall call Monsieur X) worked for TSO, a railway services company located near Paris. TSO sent Monsieur X on a business trip, during which time he met a complete stranger and they ended up going back to her hotel room for sex. During the aforementioned activity, Monsieur X had a heart attack and died. The question then arose as to whether or not the death arose “in the workplace”. If it did, then Monsieur X would have been insured for all professional activities or normal daily activities, in the workplace accident. If these were normal daily activities carried out in the workplace, this would have entitled Monsieur X’s widow (who would presumably have been his ex-wife by the end of this, either way) to compensation of 80 per cent of his salary until his retirement age. (We pause to imagine the double-shock to Monsieur X’s widow –“Your husband has died. But that’s not the bad news...”)

The ruling of the French courts, which has been upheld on appeal, is that this was a normal daily activity in the workplace and therefore compensation was due. TSO had argued that Monsieur X was not engaged in work-related activities at the time of his death, but the courts held that he was on a business trip and that sexual activity on the trip was normal – like taking a shower or having a meal.

Contrast the decision in France with a similar case in Australia. In the Australian case, a female employee, working for the government, received injuries caused by a light fixture coming loose and hitting her in the face during sex in her hotel room while she was on a work trip. In that case, the female employee sought workers injury compensation for facial injuries and depression.

Various levels of tribunals and courts reviewed the matter and came to differing decisions. The tribunal held that the sex was not an ordinary incident of an overnight stay and decided that she should not be compensated. On appeal, it was held that she should receive compensation because if she had been injured playing cards she would have received compensation, and that sex was no different (we are paraphrasing slightly!).

Naturally, the final decision went to Australia's highest court which decided that she should not be eligible for compensation. In coming to its decision, the court held that her employer did not encourage or induce her to participate in the sex and so should not be held liable.

So there we have it.

While none of the cases above are, of course, binding in Canada, we guarantee that they will be the ones you most readily remember this year.

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