HRTO Recent Damage Awards

The high-water mark for a damage award for injury to an employee's dignity, feelings and respect is a $200,000 award in A.B. v. Joe Singer Shoes Limited . The applicant in the *Joe Singer Shoes* case experienced sexual harassment and repeated assaults and harassment on a number of grounds both in her home and workplace. The applicant was also subject to threats aimed at exploiting her vulnerability as an immigrant and single mother. There is no doubt that the conduct in the *Joe Singer Shoes* case was egregious.

In this article, we review some recent damage awards in recent cases where the facts are not as extreme as the *Joe Singer Shoes* case. The awards range from $2,500.00 and $20,000.00 in addition to other remedies such as lost income. Overall, the Tribunal's awards remain conservative, but there is a trend towards higher damage awards.

Cater v. Gestion Claude L'Heureux Inc., o/a Canadian Tire 422, 2021 HRTO 254 (CanLII) - $2,500 Award

The Applicant alleged that the Respondent contravened the training and policy clauses of the Minutes of Settlement (MOS) reached between the parties and facilitated by the Human Rights Tribunal (the "Tribunal"). The MOS required the employer to retain an external human rights consultant with expertise on the Ontario *Human Rights Code* (the "*Code*") to develop a half day training for the management and supervisory staff, and prepare an internal human rights policy related to accommodation. The Applicant contended that the employer hired a consultant that did not have the requisite expertise in the *Code* and who provided inaccurate and misleading information about the *Code* and the duty to accommodate. This, according to the Applicants, resulted in the Respondent's failure to comply with the terms of the MOS. The Applicant sought an order directing the Respondent to comply with the terms of the agreement and damages of $5,000 for the contravention.

The Tribunal found that the Respondent did, in fact, fail to hire an expert to develop the training materials and provide training in accordance with the terms of the MOS. The Tribunal also recognized that the development of a policy was a critical part of the settlement for the Applicant, and given the errors in the policy, the Respondent had failed to comply with the terms of the MOS in that regard as well. The Tribunal noted

that the training and policy clauses of the MOS go to the heart of the priorities of the Applicant. The Respondent met the financial terms of the MOS and the fact that the Applicant brought this Application despite having received financial compensation demonstrated that the training and development issues were central to the resolution of the previous Application.

The Tribunal awarded the Applicant $2,500 in compensation for injury to dignity feelings and self-worth, and to ensure that the goals of the *Code* are not undermined by parties who fail to comply with settlements they have freely entered into, particularly in relation to the significance of non-monetary terms.

Camilleri v. Welland Avenue Food Services Inc. (A&W), 2021 HRTO 95 (CanLII) - $5,000 Award

Employer gave preferential treatment to new co-workers who shared the ethnicity of the manager and gave them the hours of the Applicant who identifies as white. The Tribunal found that the employer reduced the hours of the Applicant due, in part, to discrimination based on race and ordered the employer to pay $5,000 as compensation for injury to the Applicant's dignity, feelings, and respect.

EN v. Gallagher's Bar and Lounge, 2021 HRTO 240 (CanLII) - $10,000 Award (per Applicant)

The Applicants, EN, JR, and FH each filed Applications alleging discrimination in employment. EN identifies as gender queer and uses they/them pronouns; JR and FH each identify as a non-binary trans person and use they/them pronouns. The Applicants alleged that EN asked the owner of Gallagher's Bar and Lounge, Jamie Gallagher ("Mr. Gallagher"), to refer to each of them using they/them pronouns, but Mr. Gallagher continued to mis-gender them throughout their employment. The Applicants also alleged that when speaking with customers, Mr. Gallagher referred to the kitchen staff as "trannies", and that when EN raised the issue with Mr. Gallagher, he denied it and did not deal with the matter. The Applicants alleged that they were constructively dismissed because of Mr. Gallagher's failure to respond to their concerns appropriately.

Notably, the Respondent failed to file Responses to any of the Applications, and as a result, the hearing went ahead based on the allegations in the Applications.

The Tribunal found that the Applicants were entitled to lost wages, and that the discriminatory comments made by Mr. Gallagher in a very public nature was particularly serious as it was a factor in the Applicants' employment coming to an end.

The Tribunal stated that the very public nature of the comments favoured a higher award than incidents of single or few comments made by co-workers, and that the Applicants were outed without their consent in their workplace. The Tribunal also accepted that the Applicants feared risks to their safety and future discrimination due to Mr. Gallagher's comments, and that given the inaction on Mr. Gallagher's part to rectify the situation, the Applicants felt like they had no choice but to leave their place of work. In addition to an order to pay the Applicants their lost wages, the Tribunal ordered the employer to pay each Applicant $10,000 as compensation for injury to dignity, feelings and self-respect, amounting to a total of $30,000.

Espinoza v. The Napanee Beaver Limited, 2021 HRTO 68 (CanLII) - $10,000 Award

The employer failed to respond to the accommodation process initiated by the Applicant, putting the Applicant in the position of having to choose between returning to work and caring for her children. The Tribunal found that the employer failed to discharge their duty to accommodate the Applicant's family status needs to the point of undue hardship, and was ordered to pay the Applicant lost wages, and $10,000 as compensation for injury to dignity, feelings and self-respect.

Kurpel v. Ontario (Ministry of Community Safety and Correctional Services), *2021 HRTO 83 (CanLII)* – $10,000 Award

The Applicant had a disability-related restriction and required accommodation in the workplace. The employer did not properly consider her medical evidence and failed to obtain clarification before making conclusions regarding her abilities. The Tribunal found that the employer failed in their procedural duties to accommodate the Applicant and ordered the employer to pay the Applicant $10,000 for injury to her dignity, feelings, and self-respect.

Wozniak v. Oxford Mini Mart & Tip Top Cleaners, 2021 HRTO 216 (CanLII) - $12,000 Award

The Applicant alleged that during the course of her employment, she experienced sexual harassment and solicitation by the owner of Oxford Mini Mart & Tip Top Cleaners, Bruce Lee ("Mr. Lee"), as well as discriminatory comments regarding her age. The Applicant further alleged that when she rejected the employer, he became mean and aggressive towards her, and ultimately terminated her employment.

The Applicant stated that during her training week, Mr. Lee would elbow her in the waist and nudge her when they were standing behind the counter. Mr. Lee would also poke her upper arm with his finger or give her a hip check or bump almost every day.

The elbowing, poking, and hip checking continued throughout the Applicant's employment, and it became harder and more forceful over time. In response to the physical contact, the Applicant would attempt to move away and say, "back off," "go away," "no, or "I'm trying to work." Additionally, during her employment, Mr. Lee made comments regarding the Applicant's clothing, her being sexy relative to another woman, and whether she could be his girlfriend.

The Tribunal found that the employer sexually harassed the Applicant in the workplace. Mr. Lee's ongoing conduct made the Applicant feel uncomfortable, humiliated, and demeaned, and he ought reasonably to have known that his conduct was unwelcome as the Applicant expressed her displeasure to him when he engaged in the conduct. The harassment was flirtatious in nature and the Tribunal stated that it was reasonable to assume that it would not have happened had the Applicant been male. The Tribunal ordered the employer to pay the Applicant $12,000 as monetary compensation for infringement of her rights and the resulting injury to her dignity, feelings and self-respect.

The Tribunal did not find that Mr. Lee's behaviour was sexually suggestive, therefore it did not rise to the level of being sexual solicitation. The Tribunal also did not find that Mr. Lee's comments towards the Applicant amounted to discrimination. With respect to the allegation that the Applicant was terminated because she rejected Mr. Lee, the Tribunal found that the Applicant did not satisfy the legal burden of proof of establishing on a balance of probabilities that the termination was discriminatory under the Ontario *Human Rights Code*.

Giang v. DBG Canada Limited, 2021 HRTO 97 (CanLII) - $20,000 Award

The Applicant had an implantable defibrillator installed in his chest and could not be exposed to high voltage machinery. He refused to work in an area where he thought there was high voltage machinery and was terminated. The Tribunal found that the employer failed to meet their obligations under the duty to accommodate prior to terminating the Applicant's employment and ordered the employer to pay the Applicant $20,000 in compensation for injury to dignity, feelings and self-respect, in addition to lost wages.

Kovintharajah v. Paragon Linen and Laundry Services Inc., 2021 HRTO 98 (CanLII) - $20,000 Award

The employer revoked an accommodation that was provided to the Applicant to allow him to meet his child care responsibilities, and subsequently terminated him when he continued to work as if the accommodation had not been revoked. The Tribunal

found that the employer failed to meet its obligations under the duty to accommodate and that the Applicant's termination amounted to discrimination on the basis of family status. In addition to lost wages, the Tribunal ordered the employer to pay the Applicant $20,000 in compensation for injury to dignity, feelings, and self-respect.