



## **Workplace Human Rights in Newfoundland & Labrador**

Introduction

Topics to be Covered

Recent Decisions of Note

Blaney v New Brunswick \$700,000 award: political belief

Y.Z. v Halifax \$600,000 after discounts. Over \$1 million w/o discounts : race

Francis v BC \$965,500 after discounts: \$1.2 million absent reductions : race

City of Calgary v CUPE \$740,000: sexual harassment

Matheson v Presbytery of PEI: \$600,000 plus reinstatement: gender

Walsh v Mobil Oil \$900,000 age and reprisal

Fair v Hamilton-Wentworth \$600,000 plus reinstatement: failure to accommodate physical disability

A.B. v Singer \$200,000 sexual harassment

Olivia, Pascoe & Strong v Gursoy \$275,000 sexual harassment

Provincial vs Federal jurisdiction

## **Primer on Employment Law & Human Rights**

Remedies for Workplace Abuse or Termination

Civil Action for Wrongful Dismissal, Aggravated, Punitive Damages: Precedent Awards

Statutory Remedies under Labour Standards Act, OH&S

Federally Regulated: Canada Labour Code Unjust Dismissal

Unionized Worker; Grievance Procedure: Concurrent Jurisdiction

Human Rights: Provincial or Federal

## **Workers' Compensation: Impact of Amendments to Emotional Disability Eligibility**

Concurrent jurisdictions between WC and HR: user chooses

Extent of Disability Sums received as WC

WC or HR process: respective advantages and disadvantages

Limits to WC re age

Limits to WC re reinstatement

Degree of emotional distress required in WC: changes in the statute in Nova Scotia

Degree of emotional distress required in New Brunswick, PEI and Newfoundland

User not allowed to split the case

HR may dismiss HR case following WC

Questions of Issue Estoppel and Residual Discretion

Danyluk Supreme Court of Canada

## **Long Term Disability Insurance**

Reduces WC

Likely no impact on HR lost income claim, where Employee "pays" premiums

Fact Situation #1 Employee disabled when terminated due to human rights violation

#2 Employer causes the disability

#3 Employer refuses accommodation for RTW and causes disability

#4 Employee becomes disabled post termination due to extraneous events

## **Review of Protected Human Rights: Provincial**

Disability: Physical, Mental, Addictions

Religious Belief

Dress Code

Marital Status

Family Status

Age

Deadnaming

Sexual Harassment

Gender

Pregnancy

Political Belief, affiliation or activity

Social Origin

### **Derivative Remedies**

Perception

Reprisal

Poisoned Workplace

Harassment

Failure to Investigate as an independent claim

### **Making the Complaint**

Limitation Period

Civil Action

Grievance by Collective Agreement: concurrent or exclusive jurisdiction?

Sexual Harassment by civil action or by Human Rights or Workers' Comp

Sexual assault civil claims and the issue of bankruptcy

The Process under the Human Rights Act

The Officer's Investigative Report & Decision of the Commission

Judicial Review of Decision to Decline or Allow a Hearing

Settlement Offer

Hearing before the Board of Inquiry

## **Proving Employment**

Employment

The Workplace

Workplace Consequences

## **Proving the Case**

Prima Facie Case

No Intent Required

An Influential Factor

Liability of the Employer

A Final Decision ?

## **Remedies**

Summary of Remedies

Legal Costs: Only in PEI

Injured Feelings

Jurisdiction of Arbitrator under Collective Agreement

Recent Awards

History of Awards in Newfoundland & Labrador

Awards in other Jurisdictions

Damage Award to a person not a party to the proceeding

Y.Z. v Halifax Regional Development

Blaney v NB

Loss of Past Income

The Principles of the Award

Impact of Employment Contract

Defences to the Lost Income Claim

Discounts to the Claim

Notional Termination

Violation Causes the Extended Lost Income Claim

Clicking Time Clock – Delay in Getting to Hearing

Precedent Awards for Lost Income

Impact of Long Term Disability Insurance

But-For Principle: Income loss limited to this employer

Reinstatement

Principles

Precedent Cases

Reinstatement as a remedy under the Grievance Process

Loss of Future Income

Principles

Precedent Cases

Out of Pocket Losses

Job Search Expenses

Medical Costs

Loss of Fringe Benefits

Loss of Disability Insurance

Public Interest Remedies

### **Duty to Accommodate**

Defining the Duty

Precedent Awards

Undue Hardship

Employer's Defence

### **Settlement Discussions**

Mediation through the HR Commission

Private Mediation

Advantages of Mediation

Tax Issues

Repayment of E.I. Benefits

### **In Depth Review of Significant Awards**

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Chilliwack Teachers' Association v Neufeld \$750,000 award

