



## **Workplace Human Rights in Alberta**

### **Introduction**

#### **Significant Alberta Decisions**

Walsh v Mobil Oil: gender and reprisal: Lost income of 6 years \$611,000 plus emotional distress of \$35,000

City of Calgary v CUPE: Past and Future Lost income of 8 years: \$750,000 plus emotional distress of \$125,000. Total award \$875,000

Oliva, Pascoe & Strong v Gursoy; sexual harassment and reprisal: Total award \$230,000

#### **High Side Awards in Other Jurisdictions**

Blaney v New Brunswick : Political belief: \$700,000

Francis v BC. Race Lost Income of 7.25 years \$264,000 plus future lost income of 12 years = \$500,000. Total award \$940,000 after 20% discount

Y.Z. v Halifax: Race. \$80,00 for emotional distress, \$25,000 to spouse, lost income past and future \$433,000 after 50% discount, Total award \$540,000. Award would have exceeded \$1million, absent discounts.

A.P. v Singer Shoes; Ontario: sexual harassment; award of \$200,000 for emotional harm

Reverend Matheson v PEI Presbytery; gender; Lost income of 10 years in \$450,000 plus \$50,000 for emotional distress

#### **Provincial vs Federal jurisdiction**

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

#### **Remedies for Workplace Abuse or Termination**

Civil Action for Wrongful Dismissal, Aggravated, Punitive Damages

Statutory Remedies under Employment Standards Code, OH&S

Federally Regulated: Canada Labour Code Unjust Dismissal

Unionized Worker; Grievance Procedure: Exclusive Jurisdiction in Grievance Process

Human Rights: Provincial or Federal

Workers' Compensation: History: Amendments to Lower Bar for Emotional Trauma Claims:

Impact of WC benefits application on Civil Remedy vs Human Rights

Right of Employee to seek WC Benefits and Human Rights

Long Term Disability: Should benefits be offset from lost income claim in Human Rights case

### **Protected Human Rights: Provincial**

Race, colour, ancestry, place of origin

Disability: Physical, Mental, Addictions

Religious Belief

Dress Code

Marital Status

Family Status

Age

Sexual Harassment

Gender, gender identity, gender expression

Deadnaming

Source of Income

Pregnancy (included in gender)

No inclusion of Political Belief, affiliation or activity

No protection for association with protected persons

### **Derivative Claims**

Perception

Reprisal

Poisoned Workplace

Harassment

Failure to Investigate

## **Making the Complaint**

Limitation Period

Civil Action

Grievance by Collective Agreement or Human Rights ?

Remedies allowed by the Arbitral Process vs Human Rights

Sexual Harassment: Human Rights vs Civil Action

Human Rights Act Process

Director's Decision to allow complaint to proceed or dismiss

Judicial Review

Settlement Offer & Dismissal Motion

Hearing before the Tribunal

## **Proving Employment**

Employment

The Workplace

Workplace Consequences

## **Proving the Case**

Prima Facie Case

No Intent Required

Human Rights Issue must be Influential Factor

Employer Liability vs Vicarious Liability in Common Law

Final Decision

## Remedies

### **A. Injured Feelings**

#### **Significant Recent Awards: Alberta and Other Jurisdictions**

Y.Z. v Halifax Regional Development – Nova Scotia \$80,000 (+ \$25,000 to spouse)

Blaney v New Brunswick – \$230,000

Olivia, Pascoe & Strong v Gursoy – Alberta \$230,000 in total

Olivia \$125,000

City of Calgary \$125,000

Francis v Minister of Justice – BC \$176,000

A.B. v Joe Singer Shoes – Ontario \$200,000

#### **History of Awards in Alberta**

#### **Non-party Damage Awards**

**Awards for aggravated and/or punitive damages and human rights emotional suffering by arbitrator**

### **B. Loss of Past Income**

Principles

Impact of Employment Contract

Defences to the Claim

Discounts to the Claim due to extraneous factors

Extended Loss from Violation

Delay to Hearing

Precedent Awards

Impact of Disability Insurance: Should it be Offset ?

Loss of Future Disability Benefits

Notional Termination and Recovery of Lost Severance

### **C. Loss of Future Income**

Principles

Precedent Cases

#### **D. Reinstatement**

Discretionary Remedy

Review of cases awarding reinstatement & the Factors

Grievance process and reinstatement

#### **E. Out of Pocket Losses**

Job Search Expenses

Medical Costs

Loss of Fringe Benefits

#### **F. Public Interest Remedies**

#### **Disability Insurance**

Impact on WC claim

Impact on Civil Action re sexual harassment claim by assault

Impact on Human Rights

Impact on intervening disability after termination unrelated to human rights violation

#### **Duty to Accommodate**

Defining the Duty

Precedent Awards

Undue Hardship

Employer's Defence

#### **Detailed Review of Human Rights Protections**

#### **Settlement Discussions**

Mediation through the Human Rights Commission

Private Mediation

Advantages of Mediation

## **Tax Issues**

Damages for emotional harm, income loss, future income loss

Repayment of E.I. Benefits

## **Detailed Review of Significant Decisions**

Walsh v Mobil Oil

City of Calgary v CUPE

Cowling v Alberta

Oliva, Pascoe & Strong v Gursoy

Y.Z. v Halifax

Francis v B.C. Ministry of Justice

A.B. v Singer Shoes

Blaney v New Brunswick