



Workplace Human Rights in Alberta

1. Introduction PP 1-7

Significant Alberta Decisions

Volpi v LifeMark adverse action on account of mental disability: \$1 million plus

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

2. High Side Awards in Other Jurisdictions PP 8-12

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.

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

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

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

3. Menu of Remedies for Workplace Abuse or Termination PP 13-19

Civil Action for Wrongful Dismissal, Aggravated, Punitive Damages

Statutory Remedies under Employment Standards Code, OH&S

Federally Regulated: Canada Labour Code Unjust Dismissal

Human Rights: Provincial or Federal

4. Union Grievance Process PP 20-23

5. Worker's Compensation Claim PP 23-33

6. Impact of Long Term Disability Insurance PP 34-38

7. Summary Protected Human Rights: Provincial & Federal PP 40-44

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

No inclusion of Political Belief, affiliation or activity

No protection for association with protected persons

8. Derivative Claims PP 45-52

Perception

Reprisal

Poisoned Workplace

Harassment

Failure to Investigate

9. Review of Specifically Protected Human Rights

Disability PP 53-64

Religious Belief PP 65-69

Dress Code PP 70-75

Family Status PP 70-89

Marital Status PP 90-97

Age PP 78-105

Sexual Harassment PP 106-118

Social Condition PP 119

10. Making the Complaint PP 120-134

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

11. Proving Employment PP 135-147

Employment: "in respect of employment"

The Workplace

Workplace Consequences

Asset Purchase

12. Proving the Case PP 148-155

Prima Facie Case

No Intent Required

Human Rights Issue must be Influential Factor

Employer Liability vs Vicarious Liability in Common Law

Final Decision

13. Remedies

A. Injured Feelings PP 156-166

Principles of Assessment

Loss of Employment a Factor

No punitive element

Death of Complainant ends Emotional Distress Damages

B. Lost Income PP 167-179

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

Loss of Future Income

Principles

Precedent Cases

C. Reinstatement PP 180-181

D. Out of Pocket Expenses PP 182-184

Job Search Expenses

Medical Costs
Loss of Fringe Benefits

14. Duty to Accommodate PP 185-195

Defining the Duty

Precedent Awards

Undue Hardship

Employer's Defence

15. Settlement Discussions PP 196-197

16. Review of Leading Cases in Depth PP 198-258

Volpi PP 198-200

Olivia et al PP 201-205

Walsh v Mobil Oil PP 206-209

Cowling v Alberta PP 210-211

City of Calgary PP 202-215

Francis v BC PP 216-224

Blaney v New Brunswick PP 225-239

Y.Z. v Halifax PP 240-255

A.B. v Singer PP 256-258

17. Preventing Workplace Human Rights Complaints

The strongest preventive measures include:

Sample Workplace Policies to Establish Protected Rights, clearly written anti-discrimination and harassment policies

Manager Training

Immediate and fulsome investigation of complaints or suspected wrongdoing

Duty to co-operate with workplace investigation.

Internalize the Complaint

Consistent Discipline and documentation

Stated Accommodation Process

Use Ability to Make Offer to Avoid the Human Rights Process