Increasing Damage Awards In Human Rights Cases

December 01, 2016

Employers should be aware that the consequences of failing to provide a discrimination free workplace can be significant.

Those of you who attended our recent symposium in Toronto may have heard Cliff Hart speak on this issue.

Generally, human rights tribunals have the authority to award damages for: (i) past and future wage losses; (ii) loss of benefits and other employee entitlements; and (iii) injury to dignity, feelings and self-respect. In the past, damages in human rights cases for injury to dignity, feelings and self-respect were generally modest, with damage awards being limited to an unofficial maximum of around $20,000 in the most severe cases. However, across Canada, damages awarded by human rights tribunals for injury to dignity, feelings and self-respect have been escalating. Employers should be aware that the consequences of failing to provide a discrimination free workplace can be significant.

In the leading decision on injury to dignity, feelings and self-respect, *Arunachalam v. Best Buy Canada Ltd*., the Human Rights Tribunal of Ontario explained the purpose of general damage awards for loss of dignity:

> Monetary compensation for injury to dignity, feelings and self-respect recognizes that the injury to a person who experiences discrimination is more than just quantifiable financial losses, such as lost wages. The harm, for example, of being discriminatorily denied a service, an employment opportunity, or housing is not just the lost service, job or home but the harm of being treated with less dignity, as less worthy of concern and respect because of personal characteristics, and the consequent psychological effects.

Human rights jurisprudence primarily applies two criteria in determining the appropriate damages for injury to dignity, feelings and self-respect: (i) the objective seriousness of the conduct; and (ii) the effect on the particular applicant who experienced the discrimination. The first criterion recognizes that injury to dignity, feelings, and self-respect is generally more serious depending, objectively, upon what occurred. The more prolonged, hurtful, and serious harassing comments are, the greater the injury to dignity, feelings and self-respect. The second criterion recognizes the applicant's particular experience in response to the discrimination. Damages will be generally at the

high end of the relevant range when the applicant has experienced particular emotional difficulties as a result of the event, and when his or her particular circumstances make the effects particularly serious.

And so to the cases.

The British Columbia Human Rights Tribunal issued an award of $75,000 for injury to dignity in *Kelly v University of British Columbia*, 2013 BCHRT 302. Prior to this decision, the highest amount awarded for general damages by a BCHR Tribunal was $35,000. In 2015, the B.C. Supreme Court largely upheld the Tribunal's findings, but did set aside the $75,000 award for injury to dignity on the basis that there was no compelling evidence or rationale that would justify the Tribunal more than doubling the highest award. On appeal, the B.C. Court of Appeal held that the chambers judge had erred by setting aside the $75,000 award. The Court of Appeal recognized that in the case of injury to dignity awards, there is no cap and human rights tribunals should not be prevented from adequately compensating a complainant for the complainant's actual injury to dignity.

In Ontario, the Human Rights Tribunal of Ontario awarded damages of $150,000 and $50,000 to two employees against their former employer in *O.P.T. v Presteve Foods Ltd*., 2015 HRTO 675. The HRTO awarded damages as a result of the sexual harassment and sexual assault the employees suffered at the hands of the employer. Prior to this decision, HRTO Tribunals had typically awarded damages in the range of $500 to $15,000 and the HRTO had previously indicated that while there was no maximum damage award for injury to dignity, feelings and self-respect, there was an unofficial upper limit for general damages, between $25,000 and $40,000, typically awarded for especially egregious misconduct.

In Alberta, human rights damages have been low compared to the other provinces. However, in Alberta general damages for loss of dignity have also been escalating. Recently, the Alberta Human Rights Commission issued a decision in *Pelchat v Ramada Inn and Suites (Cold Lake),* 2016 AHRC 11, and ordered the respondent to pay the complainant general damages for loss of dignity in the amount of $25,000. In its decision, the AHRC Tribunal noted that in Alberta there is no statutory limit on the amount of damages available for mental distress, injury and loss of dignity flowing from discriminatory conduct. The Tribunal also noted that damages must not be so low as to trivialize the importance of the human rights legislation by effectively creating a license fee to discriminate.

While there were extreme facts in the above noted cases, these decisions make it clear human rights tribunals throughout Canada are seriously considering the effect that discrimination by employers has on employees and the human rights tribunals are prepared to order large awards against employers where circumstances warrant. Employers must take note of these rising awards. More than ever, it is imperative for employers to ensure that all workers are properly trained on harassment and workplace violence policies and also ensure that they provide a discrimination free workplace. As highlighted in the above cases, the consequences of failing to provide a discrimination free workplace can be significant.

By

Andrew Pozzobon

Expertise

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.