

Update: B.C. Court of Appeal Restores Largest Award for Injury to Dignity

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In October of last year, our office provided an update on the B.C. Supreme Court's decision to overturn the largest award for injury to dignity under the British Columbia *Human Rights Code* the "Code"). In a very recent decision, the B.C. Court of Appeal considered whether the Supreme Court erred in setting aside that award.

Under the Code, the Human Rights Tribunal is authorized to make various financial awards where there has been discriminatory conduct, including in employment cases. One type of award is for injury to a complainant's "dignity, feelings and self-respect", often referred to as an award for injury to dignity.

The Code does not provide for any cap for an award for injury to dignity. Over the years, the amount of awards made by the Tribunal for injury to dignity has slowly crept upward, but generally remained relatively modest. By 2013, the highest award by the Tribunal for injury to dignity was \$35,000.

In a 2013 decision, *Kelly v University of British Columbia* ("*Kelly*"), the Tribunal issued a surprising award of \$75,000 for injury to dignity. Kelly involved a UBC student with Attention Deficit Hyperactivity Disorder and a Non-verbal Learning Disorder, who had been terminated from its medical residency program. In more than doubling its highest award, the Tribunal found the facts to be unique and serious, including that it was the complainant's life-long passion to be a doctor, and that as a result of the termination, the complainant suffered deep humiliation and isolation from his family, including from his father, who was a doctor.

UBC sought a review by the B.C. Supreme Court of the Tribunal's decision in Kelly; arguing that the decision ought to be set aside. In 2015, the chambers judge largely upheld the Tribunal's findings, but did set aside the \$75,000 award for injury to dignity. In doing so, the chambers judge concluded that there was no compelling evidence or rationale that would justify the Tribunal more than doubling the highest award. The chambers judge remitted the matter back to the Tribunal to further consider an appropriate amount for injury to dignity.

In a judgment released in June, the B.C. Court of Appeal held that the chambers judge had erred by setting aside the \$75,000 award. The Court of Appeal differentiated an

award for injury to dignity from a quantum appeal in a personal injury case, where the loss caused by the injury is compared against a range established by the case. In the case of injury to dignity awards, the Court of Appeal recognized that there is no cap, and that while previous awards are of some precedential value, the Tribunal should not be prevented from adequately compensating a complainant for their actual injury to dignity. The Tribunal had found in this case that the complainant's injury was unique; the Court of Appeal agreed and held that the chambers judge erred by likening the situation to any other victim of discrimination who lost a job. The Court of Appeal emphasized that the complainant's termination ended his prospect of *any* job as a practicing physician. Accordingly, the Court of Appeal restored the Tribunal's \$75,000 award.

The Court of Appeal's decision provides clear support for the trend of rising human rights damages in B.C. and in Ontario. While any award for injury to dignity must be supported by the evidence, the Court of Appeal has signalled that no upper limit will be imposed on the Tribunal's ability to compensate complainants for their actual injury.

By

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