Alberta Human Rights Tribunal Cracks Down On Workplace Discrimination With Highest General Damages Award To Date

A recent decision by the Alberta Human Rights Tribunal (the "**Tribunal**") has sent a clear message that it will not take sexual harassment in the workplace lightly.

In *Oliva, Pascoe, and Strong v Gursoy,* 2024 AHRC 45, three complainants (the "**Complainants**") brought a total of six separate human rights complaints against their former employer, TJ Construction Management Ltd. ("**TJCM**"). John Gursoy ("**Gursoy**") was the CEO, director, and (indirectly) sole shareholder of TJCM. After TCJM was assigned into bankruptcy, Gursoy was added as a personal respondent to the complaints.

It was found by the Tribunal that Gursoy had subjected all three Complainants to gender-based discrimination, which ultimately resulted in the termination of each of their employment with TJCM. With respect to Oliva, Gursoy also engaged in discrimination based on physical disability.

Further, it was found that Gursoy retaliated against Oliva and Pascoe for making their human rights complaints by filing civil lawsuits against them claiming significant damages as "payback."

It was found by the Tribunal that Gursoy engaged in conduct such as:

- calling Oliva sexually suggestive nicknames such as "baby girl" and "Mrs. Gursoy;"
- making comments about Oliva's body and physical appearance that were sexual in nature;
- asking Oliva to wear "something sexy" to client meetings;
- regularly touching Oliva inappropriately and/or invading her personal space in a way that made her uncomfortable, including "nuzzling" his face into her neck, trying to kiss her cheek or neck, and touching or caressing her shoulders and back;
- slapping Oliva's backside on at least two occasions in a sexual nature;
- asking Oliva to find him "sugar babies" (referring to women that would agree to have sex with him in exchange for money and gifts);
- presenting Oliva with a giant teddy bear and a card that said "I love you" for her birthday, and telling her that she could hold the teddy bear at night and it would be as though he was with her in bed;

- suggesting to Oliva that the two of them should go to Jasper together where they could sit on a fur rug by a fireplace and drink wine;
- demanding that Oliva tell him what had happened at a doctor's appointment she attended (when this information was not reasonably required for accommodation purposes), and when she refused, yelling and swearing at her and telling her to leave the office, which led her to believe she had been fired;
- hovering around Pascoe and rubbing her back with his hand;
- calling Pascoe sexually suggestive nicknames such as "baby" or "baby girl;"
- telling Pascoe that his wife was "too old" to have children, and that he needed to find a younger woman to have a baby with;
- saying to Pascoe: "why are you looking so sexy for me baby?;"
- telling Pascoe not to wear "frumpy" clothes (in reference to business attire that she had been wearing to work);
- berating Strong in an aggressive, rude, and demeaning tone after he found out that she was pregnant;
- demoting her from executive assistant to receptionist as a result of her pregnancy;
- asking Strong to help him find "sugar babies;"
- commenting on other female employees' bodies and clothing to Strong;
- calling Strong sexually suggestive nicknames such as "baby girl" or "sexy mama," and saying things like: "you're dressing sexy for me today;"
- offering Strong $10,000 to have sex with him and provide him with a baby;
- touching Strong and invading her personal space, including by hugging her, nuzzling her neck, trying to kiss her on the cheek; and
- rubbing Strong's belly and saying: "that's going to be my baby one day."

Gursoy's conduct was unwelcome to the Complainants, was carried out without their consent, and negatively impacted them. The Tribunal found that his behaviour was completely unacceptable, reprehensible, shockingly inappropriate, and deserving of serious denunciation.

The Tribunal awarded damages to the Complainants as follows:

- Oliva: $75,000 in general damages and $26,800 in damages for wage loss as a result of discrimination on the basis of gender and physical disability;
- Oliva: $50,000 in general damages and $3,921.03 in special damages as a result of retaliation;
- Pascoe: $30,000 in general damages and $11,200 in damages for wage loss as a result of discrimination on the basis of gender;
- Pascoe: $25,000 in general damages and $1,353.88 in special damages as a result of retaliation; and
- Strong: $50,000 in general damages as a result of discrimination on the basis of gender.

The damages payable by Gursoy total $273.274.91. The general damages award of $75,000 made to Oliva is the highest ordered by the Tribunal for any one human rights complaint to date.

This case should serve as a strong reminder that gender-based discrimination (such as sexual harassment and adverse treatment due to pregnancy), discrimination on the basis of physical disability, and retaliation against employees in relation to human rights matters are completely unacceptable, and can result in significant liability to employers. Employers must take these matters seriously and protect their employees from discriminatory treatment.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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