

# Costly Human Rights Complaints—When Can Employers Recover Costs In Alberta?



Employers must respond to any human rights complaints filed against them, even the ones that opportunistic or disgruntled employees file that have no merit to them.

The human rights complaint process is lengthy, and it is costly for employers to respond to all complaints, whether or not the complaints are well-grounded or frivolous.

Unlike the civil court process, the Alberta Human Rights Tribunal (the “Tribunal”) does not often award costs to the successful party. While the *Alberta Human Rights Act* empowers the Tribunal to make “any order of costs that it considers appropriate”, the Tribunal does not often exercise this discretion, as the Alberta Human Rights Commission does not want to dissuade people from filing human rights complaints out of fear of costs.<sup>1</sup>

Costs are usually only awarded by the Tribunal in situations where an employer can establish that the complainant engaged in serious and significant improper conduct. In the recent decision of *Karpetz v Syncrude Canada Ltd.* (“*Karpetz*”) the Tribunal refused to order costs against a complainant employee after it found that the employee was “disingenuous”, “failed to be candid” with his employer, was “selective in what he recalled and was motivated by personal financial advantage in making the Complaint.”<sup>2</sup>

Despite the Tribunal’s findings in *Karpetz* against the complainant, the decision makes clear:

1. The mere dismissal of a complaint as being unmeritorious will not ordinarily attract a cost award;
2. Even where a complaint has lacked credibility, costs will not be awarded without serious misconduct that necessitates sanction in the form of costs.

While what amounts to serious misconduct is a case-by-case assessment, some examples include:

- Unethical conduct by the complainant and/or his/her legal counsel<sup>3</sup>;
- Making inflammatory statements;
- Deliberate, prolonged, and repeated attempts to mislead the Tribunal;

- Thwarting the Tribunal's process by refusing to respond to the Tribunal, failing to set hearing dates, failing to file written materials, failing to copy the respondent on correspondence, and failing to attend the hearing; and
- Conduct that is significantly prejudicial to the other party, such as personal attacks<sup>4</sup>.

Where costs are awarded by the Tribunal, the amounts awarded depend on the severity of the misconduct found. In recent decisions, they have ranged between \$300 to \$20,000, usually landing on the lower end of that range.

Often the actual costs incurred by an employer are far greater than the costs awarded. These cost considerations must be kept in mind by all employers not only seeking to avoid human rights complaints in the first place, but also in responding to any human rights complaints that are made against them.

Neuman Thompson knows and understands the *Alberta Human Rights Act* and the most recent human rights case law principles to ensure it can help employers to not only avoid human rights complaints, but also to respond effectively to any human rights complaints made against them. This increases the likelihood that any vexatious or unmeritorious complaints by employees are dismissed at the preliminary steps of the Human Rights complaint process, saving employers time and money.

#### **Footnotes**

1. *Karpetz v Syncrude Canada Ltd.*, 2024 AHRC 64 at paras 6-8.
2. *Ibid.* at para 13.
3. *Facey v Bantrel Management Services Co.*, 2019 AHRC 4 at paras 43-44.
4. *Bayrock v Millcreek Court Condominium Corp.*, 2024 AHRC 87 at para 81.

*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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