# Employer Held Vicariously Liable For Employee's Foul Mouth



Despite its common use in popular culture, the Human Rights Tribunal of Ontario (HRTO) held that the word "b*tch" is a derogatory term used to demean and disparage women. In the recent case of *Geddes v. Kuehne + Nagel Inc.*, 2024 HRTO 1127 (CanLII), the HRTO determined that when a male colleague called his female colleague by this slur, it constituted discrimination based on sex, in contravention of the Ontario *Human Rights Code* (the "Code"). Notably, for reasons explained below, the employer was vicariously liable for its male employee's discriminatory conduct and ordered to pay damages for injury to the female employee's injury to dignity, feelings, and self-respect.

### Background

In *Geddes*, the Applicant, Sheryl Geddes, was a woman who worked at a warehouse. Ms. Geddes alleged that her male co-worker, Tresvone Dietrich-Graham, discriminated against her on two separate occasions. On the first occasion, Ms. Geddes alleged that Mr. Dietrich-Graham drove his lift truck up to her lift truck and started talking to her. Ms. Geddes told him to stop because of safety concerns and Mr. Dietrich-Graham asked whether she was going to report him for not using his horns. When Ms. Geddes responded in the affirmative, Mr. Dietrich-Graham drove off and called her the slur in question.

Ms. Geddes reported the incident to her employer, Kuehne + Nagel Inc. The employer admitted that Ms. Geddes reported the incident, but that they viewed the incident as a health and safety issue, not an incident of discrimination. The employer failed to investigate the complaint.

Ms. Geddes also alleged in her application that Mr. Dietrich-Graham called her "hot mama" and sang "she's so dangerous" while she operated her lift truck. However, the HRTO found that it was not likely that this incident occurred since Ms. Geddes never reported it at any time until her application to the HRTO.

Ms. Geddes was eventually terminated and she filed a Ministry of Labour complaint. The Ministry of Labour ordered the employer to investigate the male employee's alleged use of the slur toward Ms. Geddes. Accordingly, Kuehne conducted an investigation post- Ms. Geddes' termination.

## HRTO Decision

The HRTO held that it is well-established law that the Code requires an employer to provide its employees with a discrimination-free work environment. The HRTO confirmed that this obligation includes the duty to reasonably investigate a discrimination complaint. The HRTO reviewed the employer's investigation and found that it was not sufficient as it "did nothing to ensure the end of providing the applicant with a discrimination-free work environment" while she was employed.

In addition, the HRTO outlined that the Code imposes vicarious liability on an employer for the actions of its employees in the course of their employment. While there are provisions that exempt employers from vicarious liability for harassment committed by its employees in certain circumstances, there is no such exemption for discrimination. Accordingly, the HRTO found the employer vicariously liable for Mr. Dietrich-Graham's discrimination.

The good news for Kuehne was that the HRTO found that the discrimination by Mr. Dietrich-Graham was of a less serious nature and did not amount to sexual harassment. Accordingly, Kuehne and Mr. Dietrich-Graham were liable to pay only $300.00 to Ms. Geddes on account of her injury to dignity, feelings and self-respect.

## Take-Aways for Employers

- Employers can be vicariously liable for the discriminatory actions of its employees.
- Employers have a duty to investigate allegations of discrimination.
- The duty to investigate is a "means" by which the employer ensures that it is achieving the Code-mandated "ends" of operating in a discrimination-free environment and providing its employees with a safe work environment.

The team at Goulart Workplace Lawyers is able to assist you with any questions you may have about workplace discrimination and managing complaints.

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*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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