

# Employers Unlikely To Get Costs In Alberta Human Rights



[Karpetz v Syncrude Canada Ltd.](#), 2024 AHRC 64 (C Dickins) is an Alberta Human Rights decision where an employer who had been the successful party in the main human rights action applied for a costs penalty against the unsuccessful complainant and against the Director of the AHRC. The Tribunal did not award costs to Syncrude.

This decision is important because it contains some analysis about when the [Alberta Human Rights Tribunal](#) will or will not likely award costs in a human rights hearing.

## **Facts**

The following were the facts summarized by the AHRT:

- The complainant Kelly Karpetz had alleged in her unsuccessful complaint that the respondent employer in this case, Syncrude Canada Ltd., discriminated against the complainant on the basis of physical disability in employment
- In this case, the Director of the AHRC chose to make submissions in favor of the complainant to the Tribunal. The Director does this in some cases at its discretion, usually in cases where someone has very limited means or other significant disadvantage (compared to other human rights claims). Generally the Director seems to only take cases that appear to be stronger ones
- The [complaint was unsuccessful](#), making Syncrude the successful party in that action
- Syncrude brought an application for costs under [Section 32\(2\) of the Alberta Human Rights Act](#) as against the complainant and as against the Director of the Human Rights Commission
- Syncrude was seeking \$22,575 in costs. The basis for the costs application was Syncrude's allegation that there had been improper conduct by the complainant and the Director, and procedural irregularities, specifically:
  - The Tribunal had found that the complainant had been disingenuous in his request to return to work
  - The Tribunal had found the complainant "failed to be candid" with Syncrude
  - The Tribunal had found the complainant had been selective in what he recalled
  - The Director had submitted some documents for the hearing late and submitted written argument late
- Syncrude's argument for why the costs should be \$22,575 was that if this were a civil court matter in Alberta, these are the costs that would have been awarded

to a party under Schedule "C" of the *Rules of Court*

## **Analysis / Conclusion**

The AHRT provided significant direction indicating that costs are not normally costs in human rights actions, and declined to award them for Syncrude in this case, as follows:

[36] I find the facts in this case are distinguishable from the authorities cited by the respondent [...]

[37] No misconduct at the level described in these authorities has been established on the part of the complainant or the Director. It would not be in the public interest to award costs where a complainant has lacked credibility or where procedural irregularities on the Director's part have occurred. The conduct in this matter did not result in unnecessarily prolonging the hearing, no inflammatory statements were made and there were no repeated attempts to mislead the Tribunal.

[38] While the Complaint was found to be without merit and there were procedural irregularities including late filing of the Director's closing submissions, I find the facts do not amount to a level of misconduct deserving of sanction.

[39] Party-party costs under Schedule C of *The Rules of Court* do not apply to human rights matters. [...]

## **My Take**

It is common for the party that wins any legal action to want some form of compensation from the other side. In civil court actions, the successful party does indeed normally get awarded some form of "costs" against the unsuccessful party, and these can range wildly from case to case.

However, it is not common for the human rights tribunal to award costs penalties against the unsuccessful party. This is for several reasons, including that the human rights tribunal does not want to dissuade people from filing human rights complaints out of fear of having to pay part of another party's legal fees.

The *Syncrude* case summarized here is one where I am not surprised Syncrude brought this application based on how the hearing went, but I am also not surprised costs were not awarded against a complainant and the Director.

The bar is high for a successful employer to get a costs award in human rights and this case certainly illustrates that.

One more comment is necessary. Many claims related to [harassment or a toxic work environment](#) could potentially be brought in human rights or the civil courts. Litigants and lawyers should not look at cases like this *Syncrude* costs case and conclude that litigating in human rights somehow makes more sense than litigating in the Alberta Court of Justice, for example. If the Director takes a case, that can be great for the complainant, but that does not happen frequently – its lottery justice effectively, and you will not normally know prior to filing a claim whether the Director will eventually take it on. Filing in human rights has significant risk because in my opinion (1) the human rights commission regularly screens and shuts down cases if they do not have enough documentary evidence OR are based mostly on verbal evidence OR are nuanced discrimination cases that are not blatantly obvious, and (2) the human rights commission and tribunal have rigid processes that are not

typical of other litigation tribunals and can result in valid claims being shut down. Further – in my experience – running a human rights action is actually more expensive from a legal fees perspective than running an action in the Alberta Court of Justice, so the difference in “costs” risks can be misleading.

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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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