

Major Alberta Human Rights Costs Award For Hearing Misconduct



In *Oliva, Pasco, and Strong v. Gursoy*, [2024 AHRC 81](#), the Alberta Human Rights Tribunal directed the Respondent, John Gursoy ("Gursoy") to pay \$30,000 in costs to three former employees due to his conduct leading up to and during the hearing. This ruling follows *Oliva, Pascoe, and Strong v Gursoy*, [2024 AHRC 45](#) (K Scott) which now holds the record for the highest award for general damages for discrimination in Alberta's history, with Gursoy ordered to pay a total of \$155,000 among the three complainants. Joel Fairbrother summarized that decision [here](#).

This decision is important because it is rare for the AHRT to award costs to any party, and this case provides some analysis about when that can happen.

Facts

The following is a summary of the facts leading to the cost award:

- **Significance of Respondent's Conduct:** Gursoy's behaviour leading up to and during the hearing was disruptive to such an extent that the Tribunal took the extraordinary step of removing him from the hearing room and proceeding without him.
- **Examples of Misconduct:** Gursoy engaged in continuous disruptive behaviour, including:
 - Accusing the Tribunal Chair of racism.
 - Frequently interrupting the Tribunal Chair and counsel for the Director, often using profanity while doing so.
 - Interrupting the complainants' testimony with inappropriate comments and actions, such as mocking a complainant's emotional response.
 - Ignoring Tribunal instructions, using his cellphone during the hearing, and leaving the sessions multiple times.
 - Undermining the Tribunal's authority by dismissing its instructions as unfair and interrupting the process with profane language, culminating in several instances of aggressive and disrespectful outbursts.
- **Warnings Ignored:** Despite being warned repeatedly about his inappropriate conduct and informed of potential consequences, including cost awards and removal from the hearing, Gursoy continued his disruptive behaviour and refused to acknowledge his misconduct.

Analysis / Conclusion

The Tribunal rarely awards costs, despite having broad discretion to do so under section 32(2) of the Act. For significant costs to be awarded, a party must engage in conduct which would essentially amount to abuse of process, such as:

- Dishonest conduct
- Conduct significantly prejudicial to another party.
- Conduct significantly prejudicial to the integrity of the process.

The Tribunal emphasized that Gursoy's conduct significantly prejudiced the integrity of the process. A considerable portion of the hearing time was spent addressing his inappropriate behaviour. Further, his actions had a severe impact on the complainants and Counsel for the Director, who were subjected to verbal attacks and aggressive body language.

Section 4.0 of the [AHRC Bylaws](#) states that complainants should not fear harassment and abuse by the respondent during the Commission process. The Tribunal found that Gursoy's conduct was egregious:

[30] The respondent's conduct went well beyond simply making an application that was unnecessary, being less than fully cooperative, or taking a position that was ultimately not accepted by the Tribunal. His conduct was so abusive towards the other parties and disruptive of the hearing process that it was ultimately necessary to remove him from the hearing in order to complete the process. This is the kind of conduct that the Tribunal has stated "cannot be condoned, and in fact, must be discouraged."

[31] An award of costs to the complainants is appropriate in this case. The award serves the important policy objective of preventing frivolous, vexatious, and harassing litigation and promotes economy and efficiency during litigation.

The Tribunal found that the circumstances justified a cost award of \$10,000 to each complainant, emphasizing wasted hearing time addressing Gursoy's inappropriate language and aggressive behaviour and the negative impact it had on the complainants.

My Take

As noted, the [Alberta Human Rights](#) Tribunal rarely exercises its discretion to award costs, making this decision a significant departure from typical practices. In its reasons, the Tribunal referenced past cases where costs were awarded, which ranged from \$500 to \$20,000, depending on the severity of the inappropriate conduct. The \$30,000 award in this case is the highest among those referenced, underscoring the severity of Gursoy's actions. Further, this award was made despite the lack of evidence that the complainants had incurred substantial fees, highlighting the Tribunal's willingness to impose severe penalties for egregious misconduct and reinforcing the importance of protecting complainants and the integrity of the human rights process.

Both this decision and the merits decision marks a pivotal moment in Alberta's human rights jurisprudence, showcasing the Tribunal's readiness to impose severe consequences for misconduct.

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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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