Sometimes, Pulling The Plug On A Complaint Gives Life To An Employer

In a recent **decision**, the Human Rights Tribunal of Ontario (the Tribunal) came down on an applicant for withdrawing her complaint on the proverbial courtroom steps.

AD (the Applicant) alleged discrimination with respect to employment because of disability and reprisal contrary to the ***Human Rights Code*** (the Code). On the morning of the first scheduled day hearing, the Applicant's counsel informed the Tribunal and the other parties that she had instructions to withdraw the Applicant's application. Pursuant to the Tribunal's Rules of Procedure, once an application and response have been filed, an application may be withdrawn only with the permission and upon the terms of the Tribunal.

In light the withdrawn application, the employer submitted that this was a case that "cried out" for an award of costs. By way of background, the Tribunal does not have jurisdiction to award costs. Notwithstanding the Tribunal's lack of jurisdiction in this regard, the employer pursued such request and highlighted the fact that the Applicant had displayed similar behavior in a grievance arbitration proceeding, where she withdrew her grievance after the arbitrator had ordered her to disclose her medical records.

While the Tribunal did not award costs in favor of the employer, it did indicate that the Applicant's conduct in the matter was worthy of some sanction. The Tribunal noted that the Applicant did not appreciate the significant impact that her last-minute decision to withdraw had not only on the respondent employer but also on the Tribunal. The Tribunal held that the Applicant had put the employer and its employees through considerable expenses and inconvenience, which could not pass without repercussion.

In this instance, the Tribunal declared that the Applicant was prohibited from filing any future application against the respondent employer and its current and former officers, officials, employees or agents in any way arising out or relating to the allegations raised in the application or, where the application relates to the employment context, arising out of or in any way relating to the applicant's employment or cessation of employment with the respondent. The Tribunal went further and stated that the request to withdraw the application to avoid a decision finding that the allegations raised in the application were unsubstantiated was "tantamount to a *failure* to present evidence to prove the Applicant's allegations, and warrants a declaration that the allegations raised therein are unsubstantiated."

A part of the employer’s response was a request to have the Applicant declared a vexatious litigant. In making its submission, the employer pointed to the Applicant’s similar conduct in grievance arbitration, as well as a previous application that had been filed by the Applicant with a previous employer. Notwithstanding the Applicant’s past, the Tribunal held that the circumstances in this application did not meet the “high threshold” required to make a vexatious litigant declaration.

Our Thoughts:

This decision, while employer friendly, confirms the high threshold for successfully arguing that an individual is a vexatious litigant. Additionally, it is a reminder to employers that the Tribunal cannot award costs. For now, sanctions against last minute withdrawal of complaints such as declarations and prohibitions will have to suffice.

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