The Consequences Of Sexual Harassment In The Workplace



A recent Alberta Human Rights Commission decision demonstrates the seriousness with which Tribunals are taking discrimination and sexual harassment in the workplace and further confirms the upward trend that has been seen in damages awarded in these types of cases. In *Oliva, Pascoe, and Strong v. Gursoy* 2024 AHRC 45 the Tribunal awarded the highest awards of damages for sexual harassment and retaliation seen to date, awarding over $230,000 in general damages to the three complainants.

This case involved six different complaints from three complainants. Each of the complainants alleged that they had been subjected to gender discrimination in the form of sexual harassment. The harassment included sexually suggestive nicknames, comments about personal appearance and inappropriate touching. The Tribunal found that the complainants were repeatedly and persistently subjected to sexual harassment which had a profound negative impact on them. Each complainant also alleged that they were retaliated against as a result of filing their complaints.

The Tribunal in its decision quoted from the Supreme Court of Canada's definition of sexual harassment in *Janzen.* Specifically:

To establish sexual harassment, the complainant must establish that they were subjected to unwelcome conduct that is of a sexual nature and that such conduct affects the environment or leads to adverse job related consequences. The Tribunal concluded that the sexually suggestive nicknames, comments about personal appearance and inappropriate touching established that the complainants were victims of sexual harassment.

In assessing damages, the Tribunal returned to the words of the Supreme Court of Canada in *Janzen* in relation to the affects of sexual harassment in the workplace. The Tribunal quoted the following from *Janzen:*

Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.

The Tribunal noted the impact that sexual harassment can have on the victim in the workplace, endangering their employment, affecting the work performance and undermining their sense of personal dignity. The Tribunal stated that sexual harassment is a barrier to equality in the workplace and it must be discouraged and denounced.

The manner in which damages were assessed in this case is consistent with the Tribunal recognizing the significant impact of sexual harassment in the workplace and its efforts to discourage it. For Oliva, the Tribunal agreed with the Director's request for an award of $75,000 for general damages, which is higher than any amount previously awarded by the Tribunal. The Tribunal referenced the objective seriousness of the conduct that Oliva was subjected to, noting that she was not only subjected to inappropriate language but she was also touched intimately. The Tribunal concluded that the conduct was entirely unacceptable and deserving of denunciation. Of note, the touching that was involved included hugging, kissing, nuzzling her neck and slapping her backside. The Tribunal acknowledged that this was objectively not as serious as touching her breast but found that the difference in degree was not substantial. Another factor that the Tribunal considered in their assessment of damages was that Oliva was subjected to unnecessary and discriminatory demands for medical information.

The Tribunal also agreed with the Director's request for $30,000 in general damages for Pascoe. Pascoe had been employed for just over one month, although the Tribunal noted that she was particularly vulnerable as a single mother who had just returned to the workforce. The Tribunal found that she was subjected to sexualized comments about her clothing, repeated use of sexually suggesting nicknames and attempts to hug, kiss and nuzzle her neck without consent. The Tribunal found that the conduct she was subjected to was reprehensible and deserving of significant denunciation.

The Tribunal also awarded the amount sought by the Director with respect to Strong. Strong was particularly vulnerable at the time of the harassment due to pregnancy. She was subjected to sexually suggestive nicknames and touching without consent. She was also repeatedly propositioned for sex. The Tribunal again concluded that the conduct that Strong was subjected to was deserving of strong denunciation and awarded $50,000 as general damages.

In addition to the awards of general damages for sexual harassment, the Tribunal awarded each of the complainant's $25,000 as damages for retaliation. This decision demonstrates the increased seriousness that Tribunal's are taking sexual harassment complaints and also demonstrates that there is no cap or ceiling on general damage awards for sexual harassment. While previous awards were modest, we repeatedly see that Tribunal's are willing to carefully consider the harm and damages that result from sexual harassment and that awards will be crafted to ensure that there is denunciation and deterrence.

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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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