

The Human Rights Price Tag Of Pepper Spray Discrimination



John v Edmonton Police Service, 2024 AHRC 79 (Ringseis) is a [human rights damages](#) hearing in respect of an incident where two black men were pepper sprayed by the police.

Legal counsel for the Director of the Human Rights Commission made some submissions in support of the complainants. Legal counsel for the Director in this case was Bow River Law LLP partner [Sarah Coderre](#).

This case is important because the damages awarded to the complainants are at the high end of what the Alberta Human Rights Tribunal has historically awarded. This is not an employment law case, but the damages awards in any human rights case can affect the damages in the human rights employment context, so we are summarizing it here.

Facts

The following were the facts summarized by the AHRT:

- In the [main decision dealing with liability](#), it was found that a police officer had deployed OC Spray (Pepper Spray) against two black men, and found that it was discriminatory on the basis of the following:
 - The rapid deployment at the complainant was without warning, even though they were not the individuals holding down an accused person or holding a weapon in a threatening manner
 - The lack of response to the complainants questions and concerns as they writhed in pain
 - The use of a medical form for identification against protests
 - The inattention to the cell phone that was used to 911
 - The comment about feeling lucky because they had not been shot
 - The lack of care by the police, demonstrated by the disparity as compared to the accused
 - The lack of interest shown in the complainants' accusations against the accused
- The Edmonton Police Service is in the process of attempting to overturn that liability decision through judicial review, but in the meantime the damages hearing went forward
- The complainant John had some minor physical injuries related to being

restrained and pepper sprayed, but had more significant mental pain and suffering such as poor sleep, not eating, and being afraid that the police were targeting him after the incident. He had been a calm, rational and articulate person before the incident, but became quiet and withdrawn afterwards

- The complainant Judianga felt “less than human” during the incident, and that his eyes were hurt and red for months afterwards. Judianga was outgoing and sociable before the incident but became quiet and withdrawn afterwards. There was other evidence considered regarding the impact of the incident, but its not clear in the decision what the findings of fact for this other evidence was so I will not detail it here.
- The complainants were seeking \$50,000 each in general damages for pain and suffering, plus a letter of apology

Analysis / Conclusion

The pertinent analysis of the AHRT regarding the proper quantum of damages was as follows:

[24] A review of the prior case law initially suggests that general damages in the range of \$20,000 may be appropriate [...]

[...]

[30] The respondent properly noted that the Merit Decision had already determined that the use of force in itself was not a discriminatory act per se, but rather the timing and manner in which the force was applied. The respondent submitted that the complainants’ testimony as the suffering experienced as a result of the OC spray was irrelevant.

[31] The subjective experiences of the complainants and the recent increases in damages awards in Alberta support a decision to award general damages in excess of the recent policing examples cited by the parties. I agree with the respondent’s submission, however, that the objective analysis of harm must be tempered by a separation of the use of force from the manner and timing in which the force was applied.

[32] Taking into account all of these considerations, I award each of the complainants forty thousand dollars (\$40,000) in general damages.

The AHRT then considered whether to require the Edmonton Police to write a letter of apology to the complainants, and decided not to as follows:

[35] [...] the value of the letter would be from the voluntary act of writing it. I encourage the respondent to provide a letter of regret to the complainants, but in light of the Merit Decision being under judicial review, any words required by this Tribunal to be written would likely lack the sincerity needed to provide a benefit to the complainants.

My Take

As noted at the outset, this case is important because it represents general damages for pain and suffering at the higher end of what has been awarded historically in Alberta.

Also as noted, the Edmonton Police are currently taking steps to have the liability decision overturned by judicial review to the Court of King's Bench. If that judicial review results in the liability decision being overturned, this damages decision will no longer be relevant.

The reasoning on whether to order an apology in this case also makes a lot of sense to me. Employees often want apologies from employers. The AHRT can order an employer to say sorry, they cannot order an employer to *be* sorry, and if they have clearly not yet accepted responsibility its hard to imagine a believable apology.

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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.

Author: [Joel Fairbrother](#)

Bow River Law