

Workplace Harassment Class Action Dismissed By BC Supreme Court



The Supreme Court of British Columbia has dismissed a proposed class action that consisted of allegations that an employer had committed a “systemic breach” of employment contracts by failing to provide a harassment-free workplace.

In *Lewis v WestJet Airlines Ltd.*, 2021 BCSC 228, the plaintiff advanced wide-sweeping, unproven allegations that the defendant had failed to create and implement effective policies to prevent and address workplace harassment. The plaintiff sought to bring the claim as a class action on behalf of a large number of former or current female flight attendants.

In bringing the application to certify a class proceeding, the plaintiff argued that liability could be established on a class-wide basis and without proof of harassment or harm suffered by any putative class member. The plaintiff sought the extraordinary remedy of a disgorgement of the defendant’s profits, a rarely granted remedy that is conceptually based on a defendant’s “wrongful gain” and not based on any proof of loss by the claimant. The plaintiff alleged that the defendant had achieved “costs savings” by failing to develop or implement adequate anti-harassment policies and practices, and argued that this amount ought to be disgorged to the class members.

The Court found that the claim did not meet the requirements for certification as a class action proceeding. The Court noted that there was no apparent reason why the unusual relief sought by the plaintiff would be preferable to the direct remedies that are available under the *Canadian Human Rights Act* to address workplace harassment, which the plaintiff had chosen not to seek. The Court reasoned there would be other more practical and efficient means for class members to bring their claims (if any such claims exist) including individual and systemic remedies under the *Canadian Human Rights Act*, collective bargaining and grievance arbitrations for unionized employees, and individual or multi-plaintiff court actions wherein proof of harassment or harm could be assessed by a trier of fact.

The decision confirms the importance of administrative bodies in responding to harassment in the workplace, including human rights commissions and tribunals, which are accessible to claimants, possess specialized subject matter expertise on workplace harassment, and can implement direct, systemic remedies. Courts have an important role to play as well, through a variety of causes of action that relate to workplace harassment, however a class action will not be viable in circumstances where the proposed proceeding is disproportionately complex and time-consuming in

light of the more readily available alternative remedies.

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