

Labour and Employment Law Bulletin

February 2006

Human Rights Tribunal Decision: Human Rights Commission to Pay the Employer \$100,000 Legal Costs

Pallett Valo LLP was involved in a human rights case that will be of interest to employers who may be called upon to defend themselves (or their managerial employees) in a human rights complaint.

Background

Lynx Industries Inc. terminated the employment of two employees who later claimed that they were discriminated against on the basis of race. The matter was investigated by the Human Rights Commission (the "Commission"). The investigator made findings to the effect that there were performance issues with both complainants, that there was no supportive or corroborative evidence of racism involved in the decision to terminate the employment of either complainant, and that the matter should therefore not be referred to the Human Rights Tribunal for a hearing.

However, Commission staff determined that the matter should be reinvestigated. During the reinvestigation the complainants were re-interviewed, but the respondents were not, and none of the witnesses referred to by the respondents were interviewed either. The second investigator appointed in the case noted that there had been an incident of racial graffiti in the washroom, and that there were many Polish employees in the production department as compared with more black employees in the shipping department at Lynx Industries Inc. It was therefore determined that the matter should be referred to a Tribunal hearing even though Lynx representatives were never re-interviewed.

Pallett Valo LLP sought disclosure of the Commission documents on the basis that the investigation and referral process was flawed and constituted an abuse of process. The documents that were disclosed by the Commission as a result of that motion indicated to us that the Human

Rights Commission had become concerned with the human resource practices of Lynx Industries Inc., and that the second investigation never seriously considered the evidence of misconduct put forward by the respondents prior to the Complainant's termination from employment.

The Tribunal Gets Involved

The matter did go to hearing. A considerable amount of time was spent demonstrating the misconduct of the complainants and justifying dismissal of both of them. The Tribunal found there had been considerable misconduct – rudeness to co-workers and failure to deal promptly with customers as well as general lack of productivity and co-operation on the part of the complainants. The Tribunal ruled that the complaints should therefore be dismissed.

Lynx Industries Inc. therefore requested an order of costs against the Human Rights Commission.

Section 41(4) of the Ontario *Human Rights Code* provides:

Where upon dismissing a complaint, the Tribunal finds that,

- a. the complaint was trivial, frivolous, vexatious or made in bad faith; or
- b. in the particular circumstances undue hardship was caused to the person complained against,

the Tribunal may order the Commission to pay to the person complained against such costs as are fixed by the Tribunal.

Lynx Industries Argument

Lynx Industries Inc. argued that the Commission put the company to considerable expense, inconvenience, and anxiety over a case that ought never have even investigated a second time. The argument was successful. The Tribunal stated:

“The Commission knew from its own researchers, that there was no grounds for finding the Respondents guilty of either breach of the *Human Rights Code* or guilty of the complaint. Notwithstanding this, they, for inappropriate reasons and in breach of the requirements of fairness, recommended that the matter be referred to the Tribunal.”

The Tribunal Decision

The Tribunal was very strong in its wording that principles of fairness required the Commission staff to review the evidence of the Respondents in performing an investigation. The Tribunal therefore awarded Lynx Industries reimbursement of \$100,000 in legal costs.

This is one of the few Tribunal cases in which damages were awarded against the Commission.

The Commission has appealed the decision to the Ontario Divisional Court, but the parties have since settled the dispute.

Pallett Valo LLP Labour & Employment Law Group

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We provide support to management in drafting employment contracts and company policies, collective bargaining, collective agreement administration and grievance arbitration. We work for a diverse range of employers in the private and public sectors, and have specialized expertise in the construction industry.

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Rev.01/08