

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL
CANADIEN DES DROITS DE LA PERSONNE

JACQUELINE BROWN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ROYAL CANADIAN MOUNTED POLICE

Respondent

REASONS FOR DECISION ON REMEDY

MEMBER: Dr. Paul Groarke

2004 CHRT 24
2004/07/16

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[1] The following decision deals with remedy. I believe that the obligation of the Tribunal to proceed "expeditiously", in the wording of the *Act*, extends to the provision of relief. I have accordingly advised the parties that I would deal with as many of the outstanding matters as possible before dealing with the question of costs.

[2] The Complainant has asked for compensation under two heads. The first is for twenty thousand dollars, the maximum, for pain and suffering under s. 53(2)(e) of the *Canadian Human Rights Act*. The second is for the same amount under s. 53(3), which allows a Tribunal to award additional damages if it finds that a Respondent "has engaged in the discriminatory practice wilfully or recklessly". The Complainant has also asked for interest on the award and the costs of the hearing.

I. PAIN AND SUFFERING

[3] There is no doubt that the Complainant suffered emotionally as a result of the unfairness she encountered in the promotional process. The experience rattled her. She came out of it with her self-esteem in question. I am satisfied that she is entitled to a substantial award for pain and suffering.

[4] There was some debate as to the purpose of such damages. Counsel for the Complainant argued that damages for pain and suffering are not intended "solely as monetary compensation for the pain and suffering experienced by the victim". They are also intended to express society's condemnation of such practices.

[5] I am not convinced. The law of human rights is remedial and not punitive. The purpose of damages is to put the Complainant in the position that she would have been in had the discrimination not occurred. It is the experience of the Complainant rather than the conduct of the Respondent that should be consulted in determining the amount of any award.

[6] I believe that the argument made by Mr. Gordon should be made under section 53(3), which provides a separate head of damages in cases where the conduct of the Respondent is wilful or reckless. The condemnatory element in the section may carve out an exception to the general rule that the legislation is remedial. This provides a deterrent and serves to discourage those who deliberately discriminate.

[7] The situation is different under section 53(2). As a general rule, the nature of the Respondent's conduct is only relevant in determining damages for pain and suffering when there is a causal link between the Respondent's conduct and the Complainant's feelings. If the Complainant's stress and disappointment was aggravated by the conduct of the RCMP, I accordingly agree that its conduct must be taken into account in awarding damages for pain and suffering. This is the situation that presents itself in the present case.

[8] The Complainant has submitted that the conduct of the RCMP contributed unnecessarily to her suffering. I have some sympathy with this position. The conduct of the RCMP in the case was at least intransigent. It prolonged the situation well beyond its natural termination point. This contributed to the her distress and must be taken into account in compensating her. If there is a message for the RCMP, it is that it failed to redress the situation.

[9] I have already recognized that there was stubbornness on both sides. It is evident that Corporal Brown was unwilling to return to work without an admission that she had been wronged. This was not entirely reasonable. I also accept that the force made sincere and well meaning attempts to resolve the situation. One of the ironies of the case is that it gave the Complainant medical leave to deal with the psychological aspects of the matter.

[10] There are other factors. I am not in a position to settle the dispute between the parties as to the extent of the Complainant's pre-existing psychological condition. There are nevertheless many circumstances outside the control of the RCMP that contributed to her emotional and mental state. Her father was dying; she had a history of migraines and there is a suggestion from the Respondent that she had difficulties at home. She also refused medication, apparently on medical grounds, and rejected the overtures of the Respondent. This must also be considered in determining the appropriate level of compensation.

II. WILFUL OR RECKLESS CONDUCT

[11] The Complainant has also claimed exemplary damages for wilful or reckless conduct under section 53(3). My colleague Mr. Hadjis has awarded damages under the section in a number of cases dealing with harassment. The Complainant accordingly provided me with copies of his decisions in *Woiden v. Lynn* 2002 CHRT 6, *Bushey v. Sharma*, 2003 CHRT 21, and *Groupe d'aide et d'information v. Jean Barbe*, 2003 CHRT 24.

[12] I do not see how these decisions can have any bearing on the circumstances before me. The individual in each case had acted in a manner that was humiliating

and flagrantly offensive. In *Woiden*, for example, the Respondent used the most derisive language and regularly addressed his female staff as "fucking bitches". There is nothing remotely like this on the facts before me.

[13] The RCMP may have discriminated against the Complainant, but it acted well within the normal standards of management. The Career Management Unit was under enormous pressure from all sides and conducted itself in a professional manner. There was none of the insulting conduct that played such a prominent role in the cases provided by the Complainant. I do not accept that the comments of Sgt. Kallin enter into the matter.

[14] The section may apply in situations other than harassment. It nevertheless requires something more than stubbornness. I would have thought that the provision provides for an award in circumstances where the Respondent intended and perhaps wanted to discriminate against the Complainant. Intention in the law extends to recklessness. This distinguishes those cases that fall under s. 53(3) from the usual instance of discrimination, which does not require proof of an intention.

[15] The Complainant has argued that recklessness brings in a lower standard than "wilful". She relied on a definition from *The Dictionary of Canadian Law*:

Reckless: Describes a person who, knowing that there is a risk that something may happen as a result of acting in a certain way or existing circumstances, takes the risk when it is unreasonable to take it, considering the nature and degree of the risk known to be present.

This definition would only apply if the Respondent knew that the Complainant was in a precarious psychological state and acted as it did, in the knowledge that it might precipitate a break-down. The facts simply do not support such an allegation.

[16] I do not see the indicia of recklessness here. The language used by the Board of Inquiry in *Cameron v. Nel-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170, goes far beyond the kind of circumstances before me, which cannot be described as rash, heedless or wanton. The RCMP may have been in the wrong, but it conducted itself in a measured and professional way. I do not think it is fair to describe its actions as reckless.

III. RULING ON QUANTUM

[17] Taking all of these considerations into account, the Respondent is ordered to pay the Complainant ten thousand (10,000) dollars in compensation for her pain and suffering. She is entitled to interest on such a sum at simple interest, calculated on a yearly basis at the Canada Savings Bond rate. Interest will be payable from March 14, 2000, up to the date of payment. The Respondent is directed to pay this sum within four weeks of the date of this ruling.

IV. OTHER MATTERS

[18] The Complainant has also asked that a copy of my decision on liability be placed on her personnel file. The Respondent has not resisted such an order. I am accordingly directing the Respondent to place a copy of that decision, along with the present decision, on Corporal Brown's file. There is no reason to extend this direction to future rulings.

[19] I gather that the Complainant has requested educational leave. A new issue has also arisen with respect to the transfer that I ordered in my earlier decision. I gather that the Complainant has applied for educational leave. The Respondent has responded by filing a Notice of Motion asking for a ruling that the Tribunal is *functus* on the matter. The substance of the matter is set out in the material filed by the Respondent.

[20] I cannot go into the details of the controversy without further evidence. It does not matter. The reality is that both sides have agreed that the RCMP has complied with the substance of my order. I am satisfied that the RCMP has gone some considerable distance beyond its obligations to provide the Complainant with a transfer. The present decision can accordingly be treated as a formal ruling that the Tribunal does not have any jurisdiction to deal further with the matter.

[21] Counsel for the Complainant has provided the Tribunal with copies of some of the correspondence between the parties on this issue. His letter to the Tribunal suggests that the application is unnecessary and merely reflects the desire of the Respondent "to portray the Complainant as unreasonable while the matter of damages is before the Panel." The Complainant accordingly submits that the application "amounts to an abuse of process" and requests the costs of the application. This will have to be decided at a later date. I can assure the Complainant however that the application from the Respondent had no bearing on my decision regarding the quantum of damages.

[22] The only outstanding issue between the parties is the matter of costs. The Respondent has raised a preliminary issue as to whether the Tribunal has the

authority to award costs under the *Canadian Human Rights Act*. This requires further reflection.

Signed by

Dr. Paul Groarke

OTTAWA, Ontario

July 16, 2004

PARTIES OF RECORD

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APPEARANCES:	
Charles Gordon	For the Complainant
Keitha Richardson	For the Respondent

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