

Ontario Courts continue to award human rights damages in civil claims for wrongful dismissal

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In the most recent case involving a discrimination claim “piggybacking” on a civil claim for wrongful dismissal, [Silvera v. Olympia Jewellery Corporation](#) (June, 2015), the Court awarded \$30,000 against an employer for breaches of the *Ontario Human Rights Code* (*Code*). This amount was in addition to awards for wrongful dismissal, general, aggravated and punitive damages, future lost income, cost of future therapy care, and damages to the plaintiff’s daughter for loss of “guidance, care and companionship” under the *Family Law Act*. The total award for damages was over \$300,000 indicating the egregious conduct that the employee was subject to, as well as the devastating effect it had on her. The decision in *Silvera* serves as a stark reminder that employers must implement proper human rights practices and policies and ensure adequate oversight of supervisors and management.

During the course of Ms. Silvera’s employment at Olympia Jewellery her immediate supervisor engaged in an ongoing course of conduct involving sexual assaults, harassment and racial discrimination. Ms. Silvera, a single mother, was financially dependent on the job and felt trapped in her workplace. She was not aware of any workplace harassment policies that she could utilize and the perpetrator of the assaults was usually the only accessible person of authority. Following the first sexual assault Ms. Silvera began suffering from a number of serious mental health disorders which worsened with each incident over the course of her employment. Her employment was eventually terminated in March of 2010 after she had missed a few weeks of work following a dental procedure.

Ms. Silvera commenced an action for wrongful dismissal and sought damages in relation to the sexual assaults and racial harassment she suffered at the hands of her supervisor. These included damages under the *Code*. Readers of Focus will recall the 2008 amendments to the *Code* that permit a civil court to award an employee human rights damages in a civil proceeding (see [Ontario Court awards human rights damages in wrongful dismissal action](#)). Given that the defendants did not appear at trial, the trial judge made findings of fact based on the allegations set out in the plaintiff’s Statement of Claim. In addition to finding that Ms. Silvera had been wrongfully terminated, the Court found that the supervisor’s conduct breached Ms. Silvera’s *Code* rights to equal treatment and freedom from harassment because of race and sex. The Court found that Olympia, as the employer, was vicariously liable for the conduct of the supervisor as the supervisor was the “operating mind” of Olympia.

After canvassing the case law with respect to the assessment of human rights damages, the Court noted that there is no ceiling on awards of general damages under the *Code* and noted that the quantum of damages cannot be set too low since doing so would trivialize the social importance of

the protected rights. In awarding \$30,000 in human rights damages, the Court took into account the humiliation and hurt feelings suffered by Ms. Silvera, as well as the loss of self-respect, dignity and confidence she experienced as a result of the sexual abuse and harassment.

The coupling of wrongful dismissal claims with claims of damages for human rights violations is an increasing trend in employment law. Although the relevant amendments to the *Code* were enacted in 2008, it was not until the 2013 decision in *Wilson v. Solis Mexican Foods Inc.* that a civil court exercised its authority to award such damages. Since that time, there have been a number of civil actions brought in Ontario involving claims under both heads of damages. For example, earlier this year, a judge awarded \$20,000 in human rights damages to an employee who was discriminated against on the basis of family status. In *Partridge v. Botony Dental Corporation* (January, 2015), the employer unilaterally demoted Ms. Partridge and changed her work schedule following her return to work from parental leave. The new schedule was incompatible with her childcare obligations but when Ms. Partridge insisted that she be returned to her previous position and schedule, the employer terminated her employment, alleging cause. Ms. Partridge commenced a civil action for wrongful dismissal, in which she also claimed damages for discrimination. The Court stated that the award of \$20,000 for human rights damages was to serve the dual purpose of compensating Ms. Partridge for injury to her dignity, feelings and self-respect, and acting as a deterrent to employers who are unwilling to accommodate childcare arrangements.

Another recent decision involving a claim for wrongful dismissal coupled with a discrimination claim is *Bray v. Canadian College of Massage and Hydrotherapy* (January, 2015). In *Bray*, the employer demoted the employee and changed her work schedule following the employee's return from parental leave. The employee commenced an action for wrongful dismissal and claimed that she had been discriminated against on the basis of family status contrary to the *Code*. The Court found that the employee was subject to adverse treatment due in part to her family status. In addition to her wrongful dismissal damages, the Court awarded \$20,000 in damages under the *Code* for injury to dignity, feelings and self-respect.

The ability to claim damages for *Code* infringements in civil actions for wrongful dismissal increases the scope and quantum of damage claims that employers may face when wrongful dismissal is established. This makes it all the more important for employers to raise human rights awareness in the workplace, and ensure that the workplace is free from all forms of discrimination and harassment. Employers should ensure that they have human rights policies in place that enable management to respond in a timely and effective manner to human rights issues and complaints. Employers may also consider implementing periodic human rights education and training sessions for all employees, including management. As the decision in *Silvera* demonstrates, employers can be liable for the acts of employees where the employee is an operating or directing mind of the corporation. Proactive steps to promote a harassment and discrimination free workplace may be seen as a mitigating factor where an employer is found to be vicariously liable for the acts such employees.

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