

KEEPING THE FAITH: HUMAN RIGHTS DAMAGES AWARDED TO UNQUALIFIED JOB APPLICANT

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Experienced human resources professionals know that evaluating job applicants is more art than science. Getting it right requires the employer to assess and, eventually, select applicants based on a seemingly unlimited number of factors, including experience, education and "fit".

The recent decision of *Paquette v Amaruk Wilderness and another*^[1] is a cautionary tale about the consequences of getting it wrong. In that case, the British Columbia Human Rights Tribunal ("Tribunal") sent a strong message about what can happen if an employer allows its perceptions about a prohibited ground of discrimination, such as a person's religious beliefs, to influence hiring decisions involving otherwise unqualified applicants.

Background

The Complainant, Ms. Paquette, was a graduate of Trinity Western University ("TWU"), an evangelical Christian-based university that gained notoriety when the Law Society of Upper Canada refused to grant it accreditation because of its discriminatory "Community Covenant" (which forbids TWU students from engaging in same-sex relations).^[2]

In 2014, Ms. Paquette responded to a job advertisement for an assistant guide internship with Amaruk Wilderness Corp. ("Amaruk"), a Norwegian-based wilderness expedition company with a base of operations in Vancouver. In response to her application, Amaruk sent Ms. Paquette the following e-mail:

I do not understand the purpose of your application considering you do not meet the minimum requirements that are clearly outlined on our website.

Additionally, considering you were involved with Trinity Western University, I should mention that, unlike Trinity Western University, we embrace diversity, and the right of people to sleep with or marry whoever they want, and this is reflected within some of our staff and management. In addition, the Norse background of most of the guys at the management level means that we are not a Christian organization, and most of us actually see Christianity as having destroyed our culture, tradition, and way of life.

And so Ms. Paquette's application was denied.

The two parties subsequently engaged in a fairly lengthy email exchange pursuant to which Amaruk made "ongoing venomous comments" about Ms. Paquette's religious beliefs. As a result, Ms. Paquette filed a complaint with the Tribunal alleging that Amaruk had denied her an employment opportunity because of her religion. Amaruk defended the complaint and took the position that Ms. Paquette was not hired because she did not meet the minimum requirements of the position.

Decision

During the hearing, Ms. Paquette candidly admitted that she did not meet the minimum requirements of the position. Nevertheless, the Tribunal found that Amaruk's responding email to Ms. Paquette made a point of taking issue with the principles embraced by TWU and Christianity more generally. In the Tribunal's view, this implied that Ms. Paquette's religious beliefs were also a factor in Amaruk's decision to reject her application.

That Ms. Paquette had been denied an employment opportunity in part because of her religion was confirmed in the subsequent email exchanges. In one piece of correspondence, for example, Amaruk proclaimed:

... we cannot tolerate discrimination, or intolerance, that graduates from Trinity Western University are not welcome to our (Norwegian) company...

Importantly, the uncontroverted evidence was that Ms. Paquette would have "no problem guiding gay or bisexual clients" if she had been hired by Amaruk (even though Ms. Paquette had previously signed TWU's discriminatory Community Covenant). There was no evidence that Ms. Paquette would try to impose her religious beliefs on Amaruk clients, nor that she was incapable of treating others with the equality, dignity and respect to which they are deserved.

Therefore, the Tribunal held that Amaruk had discriminated against Ms. Paquette on the basis of a presumed religious belief, and that it had declined to accept her application in part because of those beliefs. The Tribunal also held that Amaruk's "egregious" emails constituted repeated unwelcome conduct amounting to religious harassment.

In the result, the Tribunal ordered Amaruk to pay Ms. Paquette \$8,500 in damages for injury to dignity and self-respect, together with expenses and interest. In reaching this conclusion, the Tribunal observed that strongly held religious beliefs are important to a person's identity and well-being, that Amaruk's conduct amounted to a denial of Ms. Paquette's equal worth, and that the incidents had made Ms. Paquette feel ashamed about who she was and dissuaded her from being forthcoming about her religious beliefs.

However, the Tribunal did not award Ms. Paquette damages for loss of wages because it was unlikely that Ms.

Paquette would have been a successful applicant, even in the absence of the discriminatory behaviour, given that she did not meet the minimum requirements of the position. The Tribunal also opined that it was highly unlikely that Ms. Paquette would have lasted in the position for any length of time given the nature of Amaruk's representatives and the probability of a poisoned employment atmosphere.

Lessons Learned

That a rejected applicant does not meet the minimum requirements of a position is not a "get out of jail free" card for employers. If discrimination is alleged, a decision-maker will carefully consider all of the surrounding circumstances in order to determine whether the employer's perceptions about a prohibited ground of discrimination factored into the applicant's rejection.

The foregoing is not to say that employers must accept applicants who demonstrate discriminatory behaviour, or who would not treat others with equality, dignity and respect. However, employers must be careful not to rush to judgment about an applicant because of preconceived notions regarding the applicant's religious or political beliefs, ancestry, or other prohibited grounds of discrimination.

by Paul Boshyk and Natalie Cuthill, Student-at-Law

[1] (No. 4), 2016 BCHRT 35.

[2] *Trinity Western University v The Law Society of Upper Canada*, 2015 ONSC 4250 (Div Ct). TWU was not a party to Ms. Paquette's complaint.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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