

OBSESSIVE COMPULSIVE RESTAURANT REQUESTS: "THE CUSTOMER IS ALWAYS RIGHT"

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Obsessive Compulsive Restaurant Requests: "The Customer Is Always Right"

A recent successful claim by a person with obsessive compulsive disorder and germaphobia confirms that the scope of the legal obligation under Canadian law to accommodate persons with disabilities continues to expand. In its decision in *P.G. v. Baton Rouge Restaurant* (2016) HRTO 500, the Ontario Human Rights Tribunal ordered a restaurant to pay \$12,000 in damages due to a manager's refusal to serve a patron.

The claim involved an individual, P.G., who has been unable to work because of medical conditions since 2002. Prior to 2013, the applicant and his spouse regularly went to their local Baton Rouge Restaurant. During these visits, P.G. disclosed his conditions and related requests to the manager and restaurant staff, who accommodated him. The specific requests including being seated away from other patrons, having the seating area cleaned in P.G.'s presence, and particular instructions about how to be served. As an example, P.G. required that his water be served without a straw or a lemon wedge, and he had a specific way in which he required his bread to be served.

In September 2013, P.G. learned that the restaurant was under new ownership as a franchise. Initially, the accommodations which he had come to expect continued.

Problems arose, however, during a visit in December 2013. After waiting for an excessive amount of time to both place his order and then be served, P.G. asked to speak to the manager. In what the Tribunal described as a "quite belligerent" approach, the manager began the discussion by saying "What?". He then advised that none of the staff wanted to serve P.G. because he was "high maintenance".

During the interaction, P.G. attempted to explain that there was an obligation under the Ontario Human Rights Code to accommodate his needs. The ill-conceived response from the manager was that he did not need to accommodate because he was the owner of the business.

If the potential for a finding of wrongdoing was not already established, the manager's ensuing remarks virtually guaranteed a legal proceeding. Rather than de-escalating matters, the manager said "Now I know why

the police shoot crazy people like you", or words to that effect.

The manager then proceeded to tell P.G. that he was required to leave, and that he was not welcome back. P.G. attempted to pay for his dinner, but this was refused.

The consequence was humiliation, and resulting anxiety and frustration. At the hearing, P.G. testified that he was concerned that the manager may well have called the police on him based on not having paid for his meal.

In its decision, the Tribunal held that the allegations of discrimination were substantiated. As an organization providing service to the public, the restaurant could not claim that corporate policy or other reasons justified a denial of service. This was particularly the case because the required accommodation had previously been provided.

This ruling highlights the continued expansion of the scope of the duty to accommodate. In this case, the applicant did not have any apparent physical disability, and he was admittedly seeking special conditions of service. The refusal to deny detailed though not unduly onerous requests for service were ill-conceived and constituted discrimination. The decision reminds organizations which serve the public that staff must be attentive to situations where unusual requests are made, and highlights the importance of properly considering how to treat persons with disabilities.

by George Waggott

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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