

RECORD-TYING GENERAL DAMAGES AWARDED BY ALBERTA'S HUMAN RIGHTS TRIBUNAL

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In *McCharles v Jaco Line Contractors Ltd.*,^[1] the Alberta Human Rights Tribunal (“**Tribunal**”) sent a strong warning to employers that behave badly by ordering one of the highest general damages awards in the Tribunal's history.

The Tribunal's Decision

The complainant, a former occupational health and safety specialist for Jaco Line Contractors, was terminated from her employment after accusing the company's owner of sexual harassment. In particular, she alleged that:

- the owner referred to the complainant as “Supertits”;
- the owner arranged for him and the complainant to share a hotel suite during a work trip, with an open-concept den without door or lock, even though she was not comfortable doing so;
- the owner grabbed the breast and hip of the complainant as she woke up from a nap; and
- the owner was aware that the complainant had accused him of inappropriately touching her, but did not take any further action to address the matter (e.g., did not arrange for a workplace harassment investigation).

The Tribunal found that the complainant's allegations were credible. The Tribunal also noted the owner's lack of respect for women in the workplace when testifying at the hearing by referring to the complainant as “McCharles” and not “Ms. McCharles”, as instructed, and by repeatedly using the infantilizing term “gals”. This suggested to the Tribunal that the workplace was a negative environment for women.

As a result, the Tribunal ordered the company to pay \$50,000 in general damages – which are awarded for the purpose of compensating complainants for injury to dignity and mental distress, including humiliation, hurt feelings, loss of self-respect, self-esteem, and confidence. The Tribunal specifically stated:

"The demeaning and cavalier way that the Owner treated this complainant is worthy of strong sanction. Women should not be forced to make a choice between career advancement and a safe

workplace. Company owners especially owe a duty to their staff to create and maintain a safe work environment. The poisoned work environment where the complainant was exposed to demeaning names, the Owner's gossip about wanting to sleep with her, and then finally being attacked physically is appalling. No person should have to work in these conditions."

The Tribunal also ordered the company to pay \$13,150.68 to the employee for lost income, and mandated the company to implement a written anti-harassment policy and provide training to all of its employees. The Tribunal also required that any employees in a supervisory role must complete a training course in human rights that includes sexual harassment.

Takeaways for Employers

In this case, the Tribunal sent a clear message to employers regarding the serious impact that sexual harassment in the workplace has on employees. An award of this magnitude is not only intended to compensate the particular complainant for the harm caused by the impugned conduct, but also to prevent future incidents of harassment by acting as both a deterrent and an educational tool for other employers.

The Tribunal's decision also underscores the importance of conducting a thorough investigation once allegations of harassment have been brought forward. Employers must ensure to take complaints seriously, and conduct appropriate investigations. Employers should also ensure that their harassment policies and complaint procedures are up-to-date and well known to employees.

[1] 2022 AHRC 115.

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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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