

Procedure and Remedies of the Alberta Human Rights and Citizenship Commission

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When an employee is terminated from his/her employment without cause, the employer must give that employee reasonable notice of their termination or pay in lieu of reasonable notice. In the event the employer does not provide either, the employee may file a civil claim against the employer for the recovery of the appropriate sum. If the court finds that the employee was terminated without cause, it will award the amount of money that should have been paid to the employee as reasonable notice. However, if the employee feels he/she was terminated because of a personal characteristic such as race, religion, or sex, that employee may decide to pursue their complaint not in the court, but through human rights legislation.

In Alberta, an employer may not discriminate against an employee on a prohibited ground, as set forth in the Human Rights, Citizenship and Multiculturalism Act (the "Act"). These prohibited grounds are race, religious belief, colour, gender, physical disability, mental disability, marital status, age, ancestry, place or origin, family status, or source of income of that person or any other person. As a result of a recent decision of the Supreme Court of Canada, sexual orientation has been added to the list.

Once a complaint has been made to the Alberta Human Rights and Citizenship Commission (the "Commission"), and the respondent has been given a chance to address the concerns of the complainant, and it has been decided that reasonable grounds for the complaint exist, conciliation will be

offered in the hopes that the parties can settle their differences without the need for a hearing. Typically, the conciliation process will involve the parties and their legal counsel appearing before a mediator (or two mediators). The mediator will attempt to help the parties define the issues raised by the complaint. Often, the complainant finds it helpful merely to be able to confront the respondent and present his/her complaint directly. There is no limit on what may be agreed between the parties as settlement of the complaint during conciliation. The purpose of the conciliation process is to resolve disputes in a manner which is satisfactory to the parties, not to impose some form of discipline on the employer.

It is important to note that the conciliation process is conducted on a without prejudice basis. This means that nothing a party may discuss, admit, or produce may later be used against that party. The conciliation process is not focused on fact finding but rather on resolution. The mediator will not disclose any information revealed during conciliation to the investigator, in the event the matter proceeds to the investigation stage.

If the conciliation process is successful, the human rights process ends. However, if the parties are unable to reach an agreement, the matter will be referred to the investigation stage. At this point, the investigator will consider the matter and report to the Director of the Commission and recommend that the complaint be dismissed if it is without merit, he discontinued if the complainant refused to accept a reasonable settlement offer, or report that the parties were unable to settle the matter.

If the parties were unable to settle the complaint, a human rights panel (the "Panel") will be appointed. This Panel will consist of one or more members of the Commission who

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will then hold a hearing before coming to a decision.

The powers of the Panel upon making its decision are very broad, certainly beyond what a court may award in a wrongful dismissal suit. If the Panel finds the complaint is without merit, the complaint will be dismissed. If the Panel finds that the complaint has merit, in whole or in part, the Panel may order the person against whom the finding was made to do one or more of the following things. The Panel may order that the respondent cease contravening the Act and avoid committing the same or similar contravention in the future. The respondent may also be ordered to make available to the complainant the rights or privileges that he/she was denied contrary to the Act. The complainant may be compensated for wage loss or expenses incurred as a result of the breach and, finally, the Panel may order the respondent to pay damages to the complainant as compensation for his/her pain and suffering.

Of value to employees, and of concern to employers, is the additional amounts which may be awarded by the Panel. When an employee files a wrongful dismissal suit and the employer is unable to prove it had cause for dismissal, a court tries to calculate the damages which arose as a result of the breach of the employment contract. Only those amounts which can be seen to have resulted as a consequence of the breach will be awarded to the employee. This is the purpose of trying to determine reasonable notice. The court is not concerned with any other claims an employee may feel he/she should be compensated for.

However, in the human rights context, the Panel is concerned with doing what is necessary to put the complainant back in the position he/she would have been in but for the breach of the Act. This leads to a much broader range of remedies being available than can be awarded by the court. To put the complainant back in his/her original position, the Panel has a wide latitude to fashion an appropriate remedy. In Alberta, remedies have included such things as compensation for lost wages, interest on the award, legal costs, and compensation for mental anguish. The only limit on the wage loss which the Panel may award is that any wages earned more than two years prior to the date the human rights complaint was filed may not be recovered.

Other measures taken by the Panel have included ordering the employer to develop and maintain a sexual harassment policy to ensure that the problem will not reoccur. The Panel has also ordered that: a collective agreement be amended so that it no longer offends the

Act; the employer publish an apology; the employer pay the employee money so that the employee can get psychological counselling; the employer cease from contravening the Act and that it not do so in the future; and the employer reinstate the employee to the job he/she held prior to the discrimination.

In other jurisdictions, an employer has been ordered to reinstate an employee to a position above that which he/she previously occupied as it was found the employee would have received a promotion in the time he/she was away from work. There is nothing in the Alberta legislation to prevent a similar order from being made.

It may also be possible that the Panel will order the employer to employ a person who was discriminated against during the hiring process and was not offered employment as a result. Of course, the problem in this situation is that the employer may have already hired an employee and has no room for someone else. While the Panel may take this problem into account, it may also wish to use the award as an opportunity to educate the public and deter similar violations from occurring. In such a case, the employer's legitimate problems may take a back seat to other policy objectives.

Finally, an employer has been ordered to produce its personnel records to the Panel so that the Panel may examine them for evidence of discrimination of the same nature as the complaint.

Obviously, the human rights process offers more options for an employee who wishes to be compensated for what he/she views as the discriminatory manner in which he/she was treated. The amounts which may be awarded may be greater than in the normal civil arena and the range of remedies is far broader. For employers, the human rights process can seem a minefield through which to walk. Certainly, the risk of liability may be greater. Consequently, employers must be aware of their responsibilities under existing human rights legislation. The best way to avoid liability for a human rights violation is to provide a workplace where such offences do not occur.

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