

EMPLOYMENT MATTERS

January 2014

HUMAN RIGHTS UPDATE (DAMAGES IN SUPERIOR COURT)

What is the Issue?

A woman from London, Ontario was recently awarded \$20,000 in damages by the Superior Court of Justice for a violation of her human rights. Historically, human rights-related damages were obtained by filing a complaint or application before the Human Rights Tribunal of Ontario (the “**Tribunal**”). In 2008, the *Human Rights Code* (the “**Code**”) was amended to allow the Courts to award damages for breaches of the Code (s.46.1). Until recently, while many claims were likely advanced, no awards had been made by the Ontario Courts under that section of the Code.

The Case

In [*Wilson v. Solis Mexican Foods Inc.*](#), the Court awarded a wrongfully dismissed employee \$20,000 on account of her claim that her employer had breached the *Code* when it terminated her employment. In that case, the employee was a 54 year old Business Analyst whose employment was terminated in the context of what the employer described as “organizational changes”. At the time of her termination, she was suffering from back problems and was off work on a medical leave of absence. Over the course of a few months prior to her termination, the employer required her to produce at least 3 medical notes to justify her leave of absence. The employer was not satisfied with the notes and finally dismissed her employment on a without cause basis. The employee advanced a claim for wrongful dismissal in which she also alleged that her employment had been terminated, at least in part, because of her disability. The Court agreed with the employee and awarded her \$20,000 in general damages in connection with her claim.

What does this mean for Employers?

While the ability to advance civil claims for breaches of the *Code* had been in place for some time, the Courts had not yet awarded damages under that section of the Code. This decision provides employers with a precedent with respect to the price tag associated with terminating an employee in circumstances where a breach of the *Code* is found to have occurred. While the Court did not rely on the test used by the Tribunal to set the amount of damages, the amount awarded is in line with the case law emanating from the Tribunal.

This case also provides a precedent in which the Court has awarded human rights damages in the context of a wrongful dismissal action. These damages are over and above those awarded for the wrongful dismissal itself. Employers should expect to see more of these claims being advanced as part of wrongful dismissal litigation, particularly given that legal costs are recoverable in claims before the Superior Court whereas they are not recoverable in applications before the Tribunal.



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