
TRIBUNAL AWARDS DAMAGES TO JOB APPLICANT

*By Barry Kwasniewski**

A. INTRODUCTION

In [*Paquette v Amaruk Wilderness and another \(No. 4\)*](#) (“Paquette”),¹ the British Columbia Human Rights Tribunal (the “Tribunal”) considered a discrimination complaint by Bethany Paquette (the “Complainant”) after her employment application to Amaruk Wilderness Corp. (“Amaruk”), a wilderness adventure company, was rejected. The Complainant alleged that she was refused employment, in part, because of her religion and status as a recent graduate of Trinity Western University. In the decision, released on March 2, 2016, the Tribunal held that Amaruk, through the actions of its employees and director, had discriminated against the Complainant on the basis of religion. After Amaruk made preliminary objections as to the jurisdiction of the Tribunal to hear the complaint, which were dismissed, the company and its legal counsel withdrew from the hearing. The hearing of the complaint then proceeded in Amaruk’s absence.

While cases of discrimination against individuals on the basis of religious belief during the course of a hiring process are not usual, this case serves as a reminder that employers need to conduct their hiring practices in a way that does not discriminate on a presumption of religion or religious affiliation.² As this case shows, Tribunals may award damages to complainants when an employer’s (or potential employer’s) conduct causes harm to an individual’s identity on the basis of their religious beliefs. Where applicants

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¹ *Paquette v Amaruk Wilderness and another (No. 4)*, 2016 BCHRT 35, online:<<http://canlii.ca/t/gnz8x>>.

² While this is true for many charitable and not-for-profits, certain provisions under the Ontario Human Rights Code provide exceptions for special interest organizations as well as special employment for religious organizations or programs, or those programs that serve the interests of people identified on particular code grounds. For more on the provision of the Ontario Human Rights Commission’s updated policy on creed see [Charity & NFP Bulletin No 378](#).

can demonstrate *prima facie* discrimination on these grounds, an employer may be subject to liability. This *Charity & NFP Bulletin* will review the Paquette decision, the principles of which may be also applicable to Ontario employers including charities and not-for-profits.

B. FACTS

The Complainant described herself as having grown up in a Christian environment. She had attended a Christian elementary and high school. Her parents were separated and she grew up in her mother's home and her mother was a low-income parent. When the complainant was young, their church community refused to provide financial assistance to her mother and this caused the Complainant to mistrust Christian churches.

While the Complainant had no intention of attending a Christian university, after attending a recruitment seminar, the Complainant decided to attend TWU, despite her mistrust of Christianity, because the school was described as one that cared for its students. While attending TWU the Complainant signed the community covenant and honestly sought to follow it.

During her academic career at TWU, the Complainant took up various positions of employment at the university to assist with the cost of tuition, and each time she recommitted herself to the community covenant. She also testified that she attended chapel regularly and that all of these activities helped to improve her confidence and become comfortable with who she was.

During the period of her studies at TWU the complainant gained considerable experience with river rafting. During the summer she worked for river guiding companies, and she guided river rafts in the Mount Robson area of BC. The Complainant also attended guide school where she achieved her certificate of competency in paddle and oar in respect of her raft guide training. In addition to the guiding certificates she acquired her Canadian Red Cross certificate for standard first aid.

1. The Application and Correspondence

On September 10, 2014, the Complainant provided Amaruk with her résumé, photo, and covering letter after hearing about Amaruk from another rafting guide. In that letter she indicated that she was interested in becoming a wilderness guide and that she was planning to take a 90 hour wilderness first aid course that fall. On September 11, 2014, the Complainant received an email response from

Amaruk informing her that she did not meet the minimum job requirements. The email also contained additional reasons for not hiring her, which primarily comprised her involvement with TWU. Further to the reasons for rejecting her application, the email contained a critique of the Complainant's faith.

On September 13, 2014, the Complainant sent an email to Amaruk challenging their supposition that she did not qualify for the position because she attended TWU, as well as to defend her faith tradition. On September 14, 2014, the Complainant received another letter from Amaruk, which proceeded to berate the Complainant's degree qualification granted by TWU and her faith tradition. That email was further followed by a series of, what she considered to be, harassing emails from Amaruk, which the Complainant testified made her "ashamed of who she is and that she graduated from TWU."³

C. DISCRIMINATION BASED ON RELIGION

The Complainant made her complaint under section 13 British Columbia's *Human Rights Code* (the "Code").⁴ There it states:

13 (1) A person must not

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

1. The Test

When making a complaint under the *Code*, a complainant is required to prove the alleged discrimination based on the three part test outlined in the Supreme Court of Canada decision of *Moore v British Columbia (Education)*.⁵ First, the complainant must prove that they exhibited the

³ *Supra* note 1 at para 46.

⁴ *Human Rights Code*, RSBC 1996, c 210, online: <<http://canlii.ca/t/52k7s>>

⁵ *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360, online:< <http://canlii.ca/t/ftp16>> at para 33.

protected characteristic. Second, they must show that they experienced an adverse impact. And third, the complainant must show that the protected characteristic was a factor in the adverse impact. Once discrimination is established the onus shifts to the offending party to demonstrate that the discrimination was justified within the available exemptions under the particular human rights statute.⁶ Failure to discharge that onus results in a contravention of the *Code*.

2. Tribunal Analysis

a) Discrimination

Upon review, the Tribunal held that the Complainant met the first two elements of the test, since she was both a Christian and attended TWU to receive her undergraduate degree, and that she had applied to Amaruk and was denied employment. The central question before the Tribunal was whether her religion was a factor in the rejection of her employment and subsequent religious harassment.⁷ In answer to this question the Tribunal found that there were two factors involved in Amaruk's decision not to hire the Complainant. The first was her lack of qualifications since she admittedly did not meet all of the requirements for the position. However, the Tribunal also found that the Complainant's affiliation with TWU was a factor that "established in the minds of Amaruk and its employees" that the Complainant was an evangelical Christian.⁸ According to the Tribunal, this was demonstrated in the email correspondence when employees and directors of Amaruk contrasted their beliefs with those of TWU, which they assumed to be the beliefs of the Complainant. The Tribunal held that when those involved in the hiring process at Amaruk conducted their response to the Complainant in this manner, it expressed their aversion to the Complainant's connection with TWU and connected that aversion to their unwillingness to hire her.

b) Religious Harassment

In addition to finding that Amaruk had discriminated against the Complainant, the Tribunal further held that the emails from Amaruk religiously harassed the Complainant. Under normal circumstances, the Tribunal held that religious harassment is conduct that requires a course of repeated conduct.⁹ However, the Tribunal pointed out that "where the alleged conduct is

⁶ *Ibid* at para 33.

⁷ *Supra* note 1 at para 67.

⁸ *Ibid* at para 72.

⁹ *Ibid* at para 73

extreme, as little as a single act may be sufficient” to make a finding of religious harassment.¹⁰ Based on the evidence before it, the Tribunal held that it was satisfied that the conduct Amaruk engaged in amounted to religious harassment.¹¹

c) Injury to Dignity and Self-Respect

Section 37 of the *Code* provides that a Tribunal may make remedies available to successful complainants. Orders of this nature are intended to be remedial rather than punitive in an effort to put a complainant back in the position they would have been had the incident not occurred.¹² While the Complainant asserted a claim for wage losses, because she did not have the requisite qualifications, and because she expressed that she had no desire work with such a discriminatory organization, the Tribunal declined to make an award in this regard. However, the Tribunal did award damages for injury to the complainant’s dignity and self-respect.

Given the importance of religious belief, as affirmed by the Supreme Court in *Movement Laïque v Saguenay*,¹³ the Tribunal held that Amaruk’s harassment and rejection of the Complainant, in part on the basis of her religious identity, “amounted to a denial of her equal worth.”¹⁴ The Tribunal pointed out that while the duration of the harassment was only over a four day period, it was egregious in nature.¹⁵ The Tribunal noted that religious beliefs, for those who hold them, are as important to their identity and well-being as their employment. However, given that the Complainant was only seeking short term employment, and because the period of harassment was short, the Tribunal awarded the Complainant \$8,500, as opposed to the \$10,000 she claimed, for injury to her dignity and self-respect in light of the fact that these events occurred after a fragile season in her life, when her religious convictions had just crystalized; events, she testified, that caused her to feel ashamed and apprehensive of being forthcoming about her religious beliefs.¹⁶

¹⁰ *Ibid* at para 73.

¹¹ *Ibid* at para 74.

¹² *Ibid* at para 90.

¹³ *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 SCR 3, 2015 SCC 16 (CanLII), online:<<http://canlii.ca/t/gh67c>> at para 73.

¹⁴ *Supra* note 1 at para 95.

¹⁵ *Ibid* at para 100.

¹⁶ *Ibid* at para 101.

D. CONCLUSION

While this decision is one based on the British Columbia *Human Rights Code*, many of the elements applied by the Tribunal are applicable in Ontario. This case demonstrates that when an employer rejects an applicant where one of the factors for rejecting that individual is based on a religious belief or affiliation, a tribunal may conclude that the individual has suffered an adverse impact from the discriminatory practice. Discrimination, either by harassment or otherwise, against individuals who hold religious beliefs in protected social areas such as employment will not be tolerated by Tribunals who hear these complaints. In addition, where the discriminatory conduct is considered egregious by a tribunal, as it was in this case, it is well within a Tribunal's ability to grant substantial damage awards for injury to dignity and self-respect.

While certain charities and not-for-profits in Ontario may be able to exempt themselves from claims of discrimination based on exceptions for special interest organization or special employment practices,¹⁷ it is unlikely that a Tribunal would view these exemptions as defensible where the actions of an employer are considered harassing in nature. While this case may serve as an exceptional example of what employers should not do, charities and not-for-profits who are considering applicants with religious beliefs or affiliations other than those they adhere to should exercise considerable care in how they handle those applicants in order to avoid costly damage awards.



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¹⁷ See [Charity and NFP Law Bulletin No. 378](#) for a brief discussion about these exemptions.