

CHARITY MUST PAY DAMAGES FOR BREACHING OHSA

By Barry W. Kwasniewski*

A. INTRODUCTION

In *Leah Podobnik v Society of St. Vincent de Paul Stores (Ottawa) Incorporated* (the “Decision”), released September 27, 2016, the Ontario Labour Relations Board (“OLRB”) awarded damages against the Society of St. Vincent de Paul Stores (Ottawa) Incorporated (the “Charity”) for breach of subsection 50(1) of the *Occupational Health and Safety Act* (“OHSA”).¹ Subsection 50(1) is the prohibition on reprisals against workers exercising their rights under the OHSA. Ms. Podobnik was awarded \$15,062.00 in damages, including \$3,500.00 for emotional pain and suffering. This *Bulletin* will review the Decision as it applies to Ontario charities and not-for-profits.

B. FACTS

From mid-October 2011 until her termination on November 10, 2015, the Charity employed Ms. Podobnik to supervise the book room at its Wellington Street store in Ottawa. This position involved duties in both the charity and retail side of the Charity’s operations, as Ms. Podobnik initiated and facilitated two charitable programs providing books to children and seniors alongside her supervisory duties in the store. At one time Ms. Podobnik supervised 3-4 employees, but this was later reduced to 1 employee.

Ms. Podobnik had voiced concerns about the air quality in her basement workspace to her supervisors numerous times before she eventually complained to the Ontario Ministry of Labour (“MOL”). The MOL

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¹ *Leah Podobnik v Society of St. Vincent de Paul Stores (Ottawa) Incorporated*, 2016 CanLII 65109 (ON LRB), online: <<http://canlii.ca/t/gtxwx>>.

inspector made twelve orders, including several requiring the creation of a Joint Health and Safety Committee (“JHSC”), as required by the OHSA. There were compliance issues with these orders. After a JHSC was formed the inspector was told that the worker member of the JHSC had been appointed by the management rather than selected by the workers. Ms. Podobnik was eventually elected to this position. Orders were also issued “to ensure improvement of the air quality.”²

On October 8, 2015, Ms. Podobnik was told to process a larger than usual donation of books, consisting of 30 boxes “in a deplorable state” which had arrived the previous day. She refused to do so out of concern for her safety. The other employee, who she supervised in the book room, had been tasked elsewhere that day. The OLRB summarised this event and reprisals that followed against Ms. Podobnik in paragraph 55 of the Decision:

On October 8, 2015, she found the task assigned to her to be “insurmountable”. She could not perform it on her own as it was a threat to her health and safety. Her raising of the issue was treated as a refusal to work for which she was disciplined. Mr. Strate suggested to her that if she felt the work to be unsafe, she should just “quit”. The following day she was humiliated and shamed when she was demoted without forewarning before her co-workers. On November 10, 2015, upon being terminated, she was escorted out of the building — again a humiliation.³

C. OLRB DECISION

The OLRB held that the termination of Ms. Podobnik’s employment was in violation of subsection 50(1) of the OHSA. The OLRB did not accept the Charity’s position that Ms. Podobnik was terminated because her position became redundant due to restructuring of its operations. The OLRB stated:

[I]t is absolutely clear that on November 10, 2015, the day that Mr. Strate presented the applicant with her letter of termination, he was aware of her several attempts to exercise her rights under the Act. In his testimony, Mr. Strate admitted: that it was “common knowledge” that the applicant was involved in OSHA; that the applicant had spoken with the Inspector during his September visits to the enterprise; that the applicant had been instrumental in having a worker member elected to the JHSC, and shortly afterward had herself been elected as employee representative on the

² *Ibid* at para 13.

³ *Ibid* at para 55.

Committee — the lynch-pin of the joint responsibility principle which informs the Act;— and he was aware that the applicant had refused to perform unsafe work on October 8, 2015 for which she was improperly disciplined.⁴

The OLRB further noted that any one of these admissions could have cast doubt on the claim that Ms. Podobnik was terminated due to the restructuring.

As a result, the OLRB awarded Ms. Podobnik damages consisting of loss of wages, commissions, benefits, value of the job lost, and emotional pain and suffering, totalling \$15,062.00. While she could have sought reinstatement to her position, Ms. Podobnik did not seek that relief.

D. CONCLUSION

In light of the forgoing case, it is important to underscore that concerns regarding the health and safety of a workplace must be treated seriously by employers, including charities and not-for-profits. Failure to do so may result in OHSa complaints by employees. As the *Podobnik* decision demonstrates, any termination of employees tainted by OHSa reprisals will expose employers to significant monetary liabilities. Charities and not-for-profits need to consider OHSa compliance as a component of their overall risk management strategies.⁵

⁴ *Ibid* at para 45.

⁵ For information on OHSa requirements regarding workplace sexual harassment see [Charity & NFP Law Bulletin No. 389](#). For information on health and safety training mandated by the OHSa see [Charity & NFP Law Bulletin No. 340](#). For information on OHSa fines in relation to criminal conduct see [Charity & NFP Law Bulletin No. 322](#).