

Case In Point

HRTO Hearing to Proceed Despite Monetary Offer of Compensation by Respondent

Date: January 16, 2013

In [Sears v. Honda of Canada Mfg.](#), an interim decision of the Human Rights Tribunal of Ontario (“HRTO”), the HRTO rejected a respondent employer’s proposal that it pay the applicant the monetary compensation sought and that the HRTO then decline to hear the matter further as doing so would serve no useful purpose.

The applicant had alleged workplace discrimination and harassment on the basis of disability, failure to accommodate and reprisal. After the first day of the HRTO hearing, in which the applicant testified, the respondent offered to pay the amount of monetary compensation claimed, with no admission of liability, and requested an HRTO order that stated “no useful purpose would be served by further proceedings.” The applicant did not consent to this proposal.

The Tribunal concluded that it did not have the jurisdiction to make such an order. Its broad grant of statutory discretion to determine its own practices and procedures was limited by ss. 43(2) of the *Human Rights Code*, which states that an application that is otherwise within the jurisdiction of the Tribunal “shall not be finally disposed of without affording the parties an opportunity to make oral submissions.” Here, the applicant had not yet completed his submissions.

The respondent had also argued that to proceed with the hearing would be an abuse of process: the HRTO stated the respondent appeared to be of the view that the applicant wished to proceed “for the sole purpose of having his ‘pound’ of flesh’ with the witnesses for the respondent in attempt to publicly shame them for acts of perceived misconduct or inaction in the workplace.” Finally, the respondent argued that in light of the scarcity of the HRTO’s time and resources, it would not be in the public interest to continue with the hearing.

The HRTO affirmed that its primary function, the “hearing process and the production of decisions as to whether the *Code* has been breached,” was an “appropriate expenditure of public resources.” To stop a hearing in the absence of a settlement and on the basis of a willingness to pay monetary compensation “would certainly be expeditious, but it would be neither fair nor just.” As well, the applicant wished for not just monetary compensation but an apology and a commitment to employee human rights training. The Tribunal reiterated that while parties are free to reach a settlement at any time, this was not done in this matter. The requested order was denied.

This decision confirms the importance of engaging in good faith settlement discussions prior to a hearing, and exploring all possible motivators that a claimant may have for bringing the application. What can be garnered here is that a monetary amount may not be the only motivation for a claimant. Often, a claimant just wants to be heard, and this decision underscores the importance of this right.

Further, the decision advises that a respondent should not simply wait to see if the claimant is a credible witness during a hearing before seriously considering a settlement offer. The risk of relying on such a strategy is apparent in this case.