

Case In Point

Significant Damages Awarded Against Employer for Sexual Harassment of Temporary Foreign Workers

Date: June 24, 2015

In a recent decision of the Human Rights Tribunal of Ontario (the “Tribunal”), Vice-Chair Mark Hart imposed a significant damages award against corporate respondent Presteve Foods Ltd. and its directing mind, Jose Pratas (“the personal respondent”).

In [O.P.T. v. Presteve Foods Ltd.](#), two Applicants, O.P.T. and M.P.T., alleged that the personal respondent had engaged in harassment and discrimination contrary to sections 5 and 7 of the *Ontario Human Rights Code* (the “Code”). More particularly, the Applicants, both of whom were in Canada as part of the Temporary Foreign Workers Program, alleged that they were subjected to a sexually poisoned work environment, discrimination in respect of employment because of sex, unwanted sexual solicitations and advances and reprisal.

The personal respondent engaged in a pattern of unsolicited and unwelcome conduct, including unwanted “invitations” to dinner, hugs, kisses and touching. When the Applicants would refuse to engage in these acts, the personal respondent would threaten to send them back to Mexico.

At the commencement of the hearing, the Respondents raised a preliminary objection to a proceeding on the merits on the basis that the Application had not been made within one year of the events at issue. In disagreeing with this position and dismissing the objection, Vice-Chair Hart noted that both Applicants had spoken to legal counsel and to the police about the Respondent’s conduct within one year of its occurrence. Unfortunately, through no fault of the Applicants’ own, the police and legal counsel had failed to inform the Applicants of their right to bring either a human rights Application or a civil proceeding against the Respondents.

Vice-Chair Hart further noted that because the Applicants did not speak English and were not familiar with the legal system, it was not unreasonable that they had relied on others to inform them of their rights. The Applicants’ delay in bringing the Application was therefore found to have been incurred in good faith and the Application was permitted to proceed to a hearing on the merits.

The hearing took place over 16 days and involved substantial *viva voce* evidence from both Applicants and an expert in the field of Temporary Foreign Workers. The expert, Dr. Kerry Preibisch, had previously testified before the Tribunal in [Peart v. Ontario \(Community Safety and Correctional Services\)](#) (“Peart”) and was determined to be qualified to speak to the Applicants’ particular vulnerability. Significantly, the personal respondent did not give evidence at the hearing.

This meant that although Vice-Chair Hart was required to make a determination with respect to the credibility of the Applicants, he was not required to decide between two competing accounts of the events.

Vice-Chair Hart found the evidence of the two Applicants to be credible in respect of all of the allegations raised in the Application, and thus determined that the personal respondent had engaged in unwanted sexual solicitations and had sexually assaulted the Applicants. It was further determined that these acts had occurred at the personal respondent's office, in his car, while at dinner with O.P.T. and when O.P.T. was alone with the personal respondent at his home.

Notably, Vice-Chair Hart found that each of these locations constituted "the workplace" for the purposes of section 7 of the *Code*, which provides a right to be free from harassment *in the workplace* because of sex, sexual orientation, gender identity or gender expression. Even though these incidents occurred outside of the corporate respondent's physical premises and often outside of work hours, Vice-Chair Hart concluded that these incidents were sufficiently connected to the Applicants' employment to be regarded as occurring within the workplace for the purposes of the *Code*.

Vice-Chair Hart also found that the personal respondent's pattern of persistent and unwanted sexual solicitations, advances and sexual harassment had created a sexually poisoned work environment and that his actions constituted discrimination against the Applicants because of sex in respect of employment.

In light of the objective and unprecedented seriousness of the personal respondent's conduct, as well as the particular vulnerability as a migrant workers and the impact of the personal respondent's conduct on the Applicants, O.P.T. was awarded \$150,000.00 as compensation for injury to dignity, feelings and self-respect and M.P.T. was awarded \$50,000.00 as compensation for injury to dignity, feelings and self-respect. These awards were made following a thorough examination of the Tribunal's earlier cases concerning sexual harassment and sexual solicitation, where less significant compensation was awarded. Vice-Chair Hart found that these awards were proportionate to the prior awards given the far greater seriousness of the personal respondent's actions and the particular vulnerability of the Applicants as migrant workers.

Vice-Chair Hart also ordered that the corporate respondent, Presteve Foods Ltd., provide any workers hired under the auspices of the Temporary Foreign Worker program with human rights information and training in the native language of any such hire for a period of three years from the date of his decision.

Finally, although Vice-Chair Hart was also specifically asked to comment on certain aspects of Temporary Foreign Worker programs in Canada, he declined to do so. He did, however, echo his earlier sentiment in *Peart*, in which he had noted the particular and special vulnerabilities of migrant workers in Ontario, especially in light of the closed work permit that requires them to be tied to one

employer. Accordingly, though he made no specific comment about Temporary Foreign Worker programs in Canada, he did indicate that such programs generally place the enrolled workers in a uniquely vulnerable position.