



EVANS, PHILP LLP Obtains Early Dismissal of Human Rights Application On Grounds of Abuse of Process

Evans, Philp LLP succeeded recently in obtaining the early dismissal of two related Applications before the Human Rights Tribunal of Ontario. In *Nyonzima v. Idlewyld Manor*, 2011 HRTO 1517, a decision issued on August 15, 2011, the Tribunal dismissed the Applications for abuse of process based on its finding the Applicant had falsified two witness statements filed by her in support of her Applications.

Background

The Applicant, who alleged she had faced discrimination in employment on the basis of race, filed two Applications with the Tribunal. In support of her Applications, she submitted a witness list, together with six *Will Say Statements*, two of which were marked as “self-drafted”.

The Employer suspected the Applicant had fabricated the latter two statements. Accordingly, a *Request For An Order During Proceedings* seeking the early dismissal of the Applications on the grounds of abuse of process was filed on behalf of the Employer.

The Tribunal’s Decision

The Adjudicator was persuaded the Applicant had fabricated the two Statements.

As for how to deal with this situation, the Adjudicator began by citing s. 23(1) of the *Statutory Powers Procedures Act* as the source of the Tribunal’s power to “prevent abuse of process”. The latter had been defined previously as:

“something that would shock the public, conduct which would violate those principals of fundamental justice which underlie the community’s sense of fair play and decency or is vexatious or oppressive in character”.

The Adjudicator also referred to the Tribunal’s own rules, including the following:

Rule 1.1 These Rules apply to all proceedings before the Tribunal under Part IV of the Code and will be liberally interpreted and applied by the Tribunal to facilitate an accessible process and to ensure the fair, just and expeditious resolution of the merits of the matters before it.

Rule 1.7(v.1) [the Tribunal may] make such orders or give such directions as are necessary to prevent abuse of its processes and ensure that the conduct of the participants in Tribunal proceedings is courteous and respectful of the Tribunal and other participants.”

“I find it to be neither fair nor just to require the [Employer] to continue to participate in this process in the face of the Applicant’s conduct”





The Adjudicator stated that in his view, the Applicant had engaged in a scheme to “*subvert and abuse the Tribunal’s process*”. He stated this constituted an “*extremely serious breach*” of the Tribunal’s process and undermined its ability to determine the Applications based on the facts and their true merits.

As for the appropriate remedy, the Adjudicator stated that simply ruling that the statements could not be used by the Applicant at the hearing on the merits would be of “*little consequence since there are no real witnesses behind them in any event*”. He stated “*I find it to be neither fair nor just to require the [Employer] to continue to participate in this process in the face of the Applicant’s conduct*”. Accordingly, he concluded the appropriate remedy was the dismissal of the two Applications.

The Adjudicator considered whether a cost order in favour of the Employer would be appropriate. However, he concluded the Tribunal did not have authority to award costs. In coming to this conclusion, he relied on a number of previous Tribunal decisions on this point.

Implications of this Decision

This decision illustrates how the tools available under the Tribunal’s *Rules of Procedure* may be used effectively by Employers, in appropriate cases, to cut short Applications and to avoid the necessity of proceeding to a hearing on the merits. A *Request for Order During Proceedings* is an important procedure available under the Tribunal’s Rules. It can be a useful tool upon which an Employer might properly rely in a variety of situations, and not just in abuse of process situations, to obtain orders to either simplify and expedite matters or even dismiss them entirely.

This case also illustrates the importance of a party coming to the Tribunal with “*clean hands*”. A party who engages in improper conduct which undermines the Tribunal’s processes risks a severe rebuke by the Tribunal.

The Human Resources lawyers at Evans, Philp LLP have extensive expertise and experience in dealing with all manner of employment and labour relations matters. We regularly provide advice and representation to employers on a broad range of issues, including matters involving collective agreements, employment contracts, workplace legislation (including but not limited to the Employment Standards Act and the Occupational Health and Safety Act), disability management, matters under the Human Rights Code, risk management and so on.

***If you would like more information, please contact a member of our Management Labour and
Employment Law Practice***
