

ONTARIO JUDGE AWARDS HUMAN RIGHTS DAMAGES IN WRONGFUL DISMISSAL SUIT

In the case of *Lee Partridge v. Botany Dental Corporation*, 2015 ONSC 343, awarded the Plaintiff, Ms. Partridge, human rights damages under the Ontario Human Rights Code (the “Code”) in a wrongful dismissal suit against her former employer.

Background

The Plaintiff, Ms. Partridge, was employed by the Defendant, Botany Dental, for over 7 years. Initially, she was hired on as a dental hygienist and was later promoted to the position of office manager. Her regular working hours were from 9am to 5pm. She also enjoyed the privilege of having flexible working hours. She went on a maternity leave in 2011 and prior to return from pregnancy leave, she was told that her former position as office manager was no longer available, and she would have to return to her former position as a dental hygienist at reduced pay. When she complained, she was told that she would be required to work up until 6pm, even though her employer was aware that the new schedule conflicted with her daycare arrangements.

Partridge and Botany Dental fell into disagreement over the changes to her position and her work hours, which culminated in her dismissal. Botany Dental refused to provide her with a severance package, alleging, among other things, that she harassed employees and disrupted the office over their scheduling disagreement. Ms. Partridge sued her former employer for wrongful dismissal. She also claimed compensation for family status discrimination under the Ontario *Human Rights Code*.

Judgment

The Court held that Botany Dental failed to establish that it had just cause to terminate her employment. The Court awarded the Plaintiff wrongful dismissal damages in the amount of 12 months’ pay. The Court went further and reviewed the employer’s conduct in the lead up to her dismissal. The Court found that the employer breached the *Employment Standards Act (“ESA”)* by failing to reinstate her to the position of office manager and by terminating her employment as a reprisal for exercising her rights under the job-protected leave provisions of the *ESA*.

The Court also held that Ms. Partridge was discriminated against on the basis of family status in violation of the *Code*. By requiring her to work until 6pm, Ms. Partridge was unable to put in place feasible child care arrangements for her children. She relied on extended family members and a neighbor to assist so that she could work until 6pm, but the arrangement was not a feasible long run solution. She could not afford to hire someone to pick her children up from daycare and look after them until she returned home after 6pm.

In all the circumstances the Court was satisfied that Ms. Partridge had been discriminated against on the basis of family status. Botany Dental could not establish there was any legitimate operational need to have her work beyond 5pm. Botany Dental was also ordered to pay Ms. Partridge \$20,000 for violating her human rights. In the Court’s view, the award should be a “*deterrent to employers who are unwilling to accommodate childcare arrangements, except where legitimate, justifiable grounds exist for being unable to do so.*” The Court further noted that this type of discrimination has an economic impact on individuals who can often least afford it.

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HR MANAGER'S GUIDE TO INDEPENDENT CONTRACTORS IN THE WORKPLACE



Lessons for Employers

Since the 2008 amendments to the *Code*, individuals are permitted to pursue a claim for human rights damages in civil proceedings, such as in actions for wrongful dismissal. Previously, individuals could only seek remedies under the *Code* by pursuing a human rights complaint with the Ontario Human Rights Tribunal. A wrongful dismissal suit had to be pursued separately through the Court process, adding to the existing burden of legal fees and the hurdles of navigating through two different legal proceedings.

Partridge is the first of only a handful of judicial awards so far since the 2008 amendments, in which the Courts have awarded human rights damages under the *Code*. The *Partridge* case follows the Ontario Superior Court's earlier decision in *Wilson v. Solis Mexican Foods Inc.*, 2013 ONSC 5799, in which the Court also awarded the Plaintiff in that case \$20,000 in human rights damages in addition to wrongful dismissal damages. Provincially regulated employers in Ontario can expect to see more discrimination claims being advanced in wrongful dismissal suits. It should be noted that while the Courts can award damages under the *Code*, they lack the broad remedial powers of the Ontario Human Rights Tribunal, which can order, among other remedies, an employer to issue an apology, implement anti-discrimination training, and even reinstate an employee to their employment with back wages.

Finally, the *Partridge* case further serves as a caution to employers that the Courts, in addition to human rights tribunals, will compensate employees for failing to accommodate an employee's child care obligations without legitimate and justifiable grounds. The duty to accommodate is not meant to protect an employee's child care preferences, but employers have a duty to accommodate legitimate child care needs. Employees, however, should be prepared to show that s/he has made reasonable efforts to meet their obligations through reasonable alternative arrangements, but no feasible solution is accessible.

LATEST NEWS

[David Whitten](#) was quoted in [The Hill Times](#) regarding his opinion towards the proposed amendment to the parliamentary harassment policy. Read the full article [here](#).

[David](#) was interviewed by the [Human Resources Professionals Association](#) for HR This Week discussing legal considerations for employers with employees who have after-hours jobs. Keep an eye out for this article [here](#).

[Precedent Magazine](#) asked [David](#) for his professional opinion regarding the \$384-million class action lawsuit against Deloitte. See what he had to say [here](#).

[Daniel Lublin](#) answered some of his loyal readers' top questions in his [Globe & Mail](#) Q&A column. See if he answered one of your questions [here](#).

[Paul Macchione](#) hosted a webinar for [HRPA](#) entitled Risky Business: Leading the Termination Process. Find more details [here](#).

[Ozlem Yucel](#) lead a webinar for the [Canadian HR Reporter](#) discussing The Ontario Employment Standards Act and the Ministry of Labour: What Employers Need to Know. See what she had to say [here](#).

UPCOMING EVENTS

On March 18th, [David Whitten](#) will be leading a webinar presentation for the [HR Reporter](#) entitled Accommodation and Attendance Management. Don't miss out on your chance to [register here](#).

[Daniel Chodos](#) will be hosting a seminar on March 24th for the [HRPA](#) entitled The Modern Human Rights Landscape: Challenges and Opportunities for Employers. Click here [to register](#).


On April 21st, Ellen Low will be speaking before the [HRPA](#) on the seminar entitled Disability or Discipline - What happens when disability and performance needs collide? Make sure you sign up early [here](#).

Coming up on May 5 and 6th, [David](#) will be leading a workshop regarding social media risks in relation to employment law for the [Federated Press](#) entitled 6th Social Media Risks. [Sign up here](#).

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