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Ontario Court Finds Decision of Human Rights Tribunal to be Factually and Legally Flawed

By: Kathryn Bird

The Ontario Divisional Court has recently found that a decision of the Ontario Human Rights Tribunal was legally and factually unsupportable and that it was "simply not possible to logically follow the pathway taken by the adjudicator and to determine the reasonableness of the conclusions reached."

In *Audmax v. Human Rights Tribunal of Ontario and Seema Saadi*, the Court reviewed a decision of the Tribunal which had found that a legally blind Muslim woman of Bengali-Canadian origin was discriminated against by her employer. Specifically, the adjudicator found that the employer's microwave policy was arbitrarily applied and discriminated against the employee on the basis of her ancestry and ethnic origin, that its dress code policy was non-neutral, vague and arbitrary and discriminated against the employee on the basis of her sex and creed, and that the employee's ethnic and/or religious background was a contributing factor in the termination of her probationary employment.




On judicial review, the Court found that the decision of the Tribunal was "patently unreasonable" and thus unsustainable. It found numerous errors in the decision, including:

- the manner in which the adjudicator dealt with the inability of a key employer witness to attend the hearing was a denial of procedural fairness;
- the findings with respect to the microwave policy were flawed by legal errors and lacked factual support;
- the reasons with respect to the discriminatory nature of the dress code were inadequate;
- there was an overall failure to refer to evidence to support critical findings of fact, for example on the issue of credibility; and
- the reasons were inadequate to support the conclusions reached or to permit meaningful judicial review.

The decision of the Divisional Court is of particular interest in light of its earlier finding in *Shaw v. Phipps*, in which it stated that "the highest degree of deference is to be accorded to the decisions of the Tribunal on judicial review with respect to determinations of fact and the interpretation and application of human rights law, where the Tribunal has specialized expertise".

The findings of the Divisional Court in *Audmax* are a clear warning that the Tribunal must ensure its hearing processes are fair and balanced and its reasons are adequate, with both factual and legal support. In addition, the Court's sharp rebuke of the adjudicator's inadequate reasons may well result in more rigorous decision-making on the part of the Tribunal.

If you have any questions, please contact Kathryn Bird at

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