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The case of the smelly lunch

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An ex-employee complained of discrimination because of race, colour, ancestry, place of origin, ethnic origin, disability, creed and sex

There are many cases of genuine racism and discrimination in Canada. I don't believe this is one of them.

This is the story of a smelly lunch, a disgruntled employee and a powerful human-rights tribunal that slapped a small businesswoman with a hefty fine on the basis of an unsubstantiated grievance. When she didn't pay up, the other side's lawyers got a writ to order the seizure of her house.

Maxcine Telfer is the victim (oops, respondent) in this case. She owns Audmax Inc., an outfit based in Mississauga that gets federal money to assist immigrant women in finding work. In 2008, she hired Seema Saadi on a probationary basis as an intake worker. Things didn't go well, to say the least. Ms. Saadi lasted only six weeks before she was fired. Next stop: the Ontario Human Rights Tribunal, where the ex-employee complained of discrimination and harassment because of her race, colour, ancestry, place of origin, ethnic origin, disability (she is legally blind), creed and sex.

The case was heard by tribunal vice-chair Faisal Bhabha, who found in favour of Ms. Saadi. He ruled that the company's dress code and its policy for staff microwave use were discriminatory against her, and that the employer failed to properly accommodate her religious attire. He slapped Ms. Telfer with a whopping \$36,000 fine and ordered her to take sensitivity training.

By Ms. Saadi's own account, she was a timid, observant Muslim just trying to make her way in a strange new world. One day, when she warmed her lunch in the microwave - it was a curry - her boss complained about the smell. After that, she was afraid to use the microwave again. "I was so scared," she told the Toronto Star. "I was so worried that I would get in trouble." She began to feel targeted, and believed it was just a matter of time before she'd lose her job. Then one day her boss called her in to criticize her religious dress as "unprofessional." She told the arbitrator that she'd have been uncomfortable "dressing for success" in the secular style that Ms. Telfer recommended to her clients.

In fact, Ms. Saadi was no helpless newcomer. A Canadian-born young woman of Bangladeshi background, she has a degree in sociology and environmental studies from York University (a good place to pick up a sharp sense of grievance along with your degree). This was her first job. Her idea of religious dress seems to have been highly individualistic. According to her boss, on the day she criticized her newest employee for

dressing unprofessionally, Ms. Saadi was wearing a jingling ankle bracelet, open-toed slippers, a tight short skirt and leggings, and a self-selected head covering described as a "cap." Perhaps not quite the ensemble in which to counsel new Canadians seeking a toehold in the workplace.

As for the microwave event, it was nothing personal. Ms. Telfer was so sensitive to smells (there was a strict anti-scent policy in force) that everyone else had simply given up on microwaving their lunch altogether. Ms. Telfer testified that she dismissed Ms. Saadi not for eating curry or even for her dress, but because she'd been suspected of snooping in other people's desks and other troublesome behaviour.

This week, Ontario's Superior Court overturned the Human Rights Tribunal's decision, calling it "fatally flawed." The case will be sent back to the tribunal to be reheard by someone else. Ms. Telfer, needless to say, is relieved that she won't lose her house, for now.

But we shouldn't be relieved, because the quasi-judicial proceedings of these tribunals too often violate the normal rules of procedural fairness. In its decision, the court was sharply critical of the arbitrator because he had refused to hear key evidence supporting Ms. Telfer's version of events, and often accepted Ms. Saadi's version only on her say-so. The court said it could find no link between the evidence he heard and the conclusions he drew. Ms. Saadi had a free lawyer, supplied by the tribunal, to represent her. Ms. Telfer (who wasn't entitled to free counsel) represented herself.

Could this happen to you? Sure. Small businesses are common targets of frivolous human-rights complaints. Generally, their lawyers tell them to shut up and pay - because if they don't, it's going to cost them even more.

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