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Free Speech On Trial In Canada

From: The Star.com

Moira Welsh Staff Reporter

A Mississauga businesswoman whose home was ordered seized to pay an Ontario Human Rights Tribunal award to a former employee can keep her house — for now.

The Superior Court struck down the “fatally flawed” decision as so unfair to defendant Maxcine Telfer — who represented herself in the hearing — that it was “simply not possible to logically follow the pathway taken by the adjudicator.”

That October 2009 decision ordered Telfer to pay \$36,000 to a woman who had been her employee for six weeks. Lawyers wanted the sheriff to seize and sell Telfer’s home to collect the money.

The woman who lodged the complaint, Seema Saadi, told the tribunal she felt pressured to wear skirts and heels instead of her hijab. Saadi also said Telfer complained about the smell of food that she warmed in the microwave.

The three-judge Superior Court panel ordered the tribunal to hold a new hearing before a different adjudicator, expected to be held in the next six months.

It also dismissed Telfer’s \$36,000 penalty, which ended a plan by the complainant’s lawyers to get the money by ordering the sheriff to sell her house.

“I feel vindicated,” said Telfer, who owns Audmax Inc., a company that gets federal government money to provide job training to immigrant women.

The Superior Court ruling is a powerful reminder to Ontario’s new human rights legal system — created in June 2008 — that fairness is paramount. It is the first time a tribunal decision has been sent back for a new hearing.

Lawyer Ted Charney, who represented Telfer during the Superior Court judicial review, said both the complainant and the defendant should get equal access to justice “particularly in human rights claims where people’s reputations are at stake.

“The panel sent a clear message to the Human Rights Tribunal that their adjudicators have to be more careful . . . in order to assure they provide a fair hearing — not only to the complainant — but to the person who is the subject of the complaint,” Charney said.

The new system allows some complainants to get free legal services from the Human Rights Legal Support Centre while the accused must hire their own lawyers.

Saadi, a York University graduate, filed the complaint against Telfer after she was fired from Audmax in June 2008.

Saadi was given free services from the legal support centre. Telfer represented herself.

The Toronto Star wrote about Saadi’s case last year, in a story about the new human rights

system, which is swamped with complaints.

Saadi is a Muslim woman, who wears a hijab. In July 2009, Saadi told the four-day tribunal hearing that she felt targeted after two other Muslim women quit their jobs at Audmax.

Saadi said she felt pressured by Telfer to wear skirts and heels, saying she preferred her long, loose clothing. Saadi also said Telfer complained about the smell of food that she warmed in the microwave.

The adjudicator's decision found that Saadi was a victim of discrimination. He ordered Telfer and her company to pay Saadi \$36,000 for lost wages and general damages.

Saadi's lawyers placed a lien in that amount on Telfer's modest Mississauga home. The centre has the right to enforce payments.

The lawyers later obtained a "writ of seizure" that ordered the sheriff to sell Telfer's house.

Lawyer Charney said he got involved after Telfer panicked over the prospect of losing her home.

"The only reason they backed off," Charney said, "is because we got this judicial review and we convinced them to wait until the hearing was over before they tried to seize their house and sell it with the sheriff.

"This was for an employee who had been with the company less than six weeks."

The Superior Court found nine points in which the tribunal adjudicator failed to provide a fair hearing or made legal errors.

For example, the court said the adjudicator did not give Telfer the opportunity to call a key witness, who would have testified about Saadi's choice of clothing, "unauthorized intrusions into other people's desks, and missing files."

The court also ordered Saadi to pay Telfer \$10,000 in legal costs.

The legal support centre has said it will pay that bill, and represent Saadi at the new hearing.

"I am a little bit surprised and a little bit confused about how the justice system works," Saadi said.

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