

Human Rights Tribunal May Reinstate Employee Where Discrimination a Factor in Dismissal

Local governments and all employers were recently reminded that the British Columbia Human Rights Tribunal (“Tribunal”) may reinstate a terminated employee into his or her former position if the Tribunal finds that discrimination was a factor in the termination.

In *Kalyn v. Vancouver Island Health Authority* (No. 3), 2008 BCHRT 377, the complainant (“Kalyn”) sought reinstatement into her position with the Vancouver Island Health Authority (“VIHA”), which she had held since 1996. She worked in VIHA’s protective services unit, which was male-dominated. VIHA dismissed her without alleging cause, but submitted in the Tribunal proceedings that it did so due to her poor professional department and breaches of confidentiality, including gossiping.

Kalyn’s complaint before the Tribunal alleged that she had been systematically discriminated by VIHA on the basis of gender in contravention of section 13 of the Human Rights Code, R.S.B.C. 1996, Chapter 210 (the “Code”). She believed that she was ultimately fired because she had been labeled by VIHA as a troublemaker. She felt that this was a consequence of her efforts to address gender discrimination as a female in the protective services unit. Her submissions to the Tribunal included allegations that VIHA scrutinized her actions as a woman more closely than those of the men in her unit.

Based upon the evidence before it, the Tribunal found that Kalyn’s gender was a factor in her termination and, accordingly, VIHA’s reasons for her termination were not based solely on non-discriminatory reasons. The Tribunal ordered monetary damages against VIHA. However, what is notable about this case is that the Tribunal also decided to reinstate Kalyn into her position, despite VIHA’s strong opposition to this remedy.

Section 37 (2)(d)(i) of the Code provides that the Tribunal may order the entity that contravened the Code to:

[M]ake available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code.

Although reinstatement does not appear to be frequently granted by the Tribunal, the Kalyn matter provided the Tribunal with circumstances it felt were appropriate for the employment of that remedy. Included in the circumstances were that VIHA opposed her reinstatement for the same reasons that it argued she was not a good employee. Because VIHA’s reasons for her termination had not been given much weight by the Tribunal in its finding of discrimination, they were equally unpersuasive in opposing Kalyn’s reinstatement.

In conclusion, the Kalyn decision reminds local governments, and all employers, that reinstatement of a dismissed employee is a potential risk where workplace practices could be characterized as discriminatory in nature.

To read the Tribunal’s decision go to: *Kalyn v. Vancouver Island Health Authority* (No. 3), 2008 BCHRT 377.

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