



e2r Alert!

Alberta Court Recognizes New Tort of Harassment

In *Alberta Health Services v Johnston*, 2023, the Court of King's Bench of Alberta recognized a new tort of harassment and awarded an individual plaintiff \$650,000 in damages. A tort is an actionable wrong that causes someone to suffer a loss or harm – it is not normally a contractual matter but exists under the common law.

Who?

The individual plaintiffs were Alberta Health Services (AHS) employees who work as public health inspectors. It is their role to educate Albertans about and enforce public health mandates and orders of the Chief Medical Officer of Health (CMOH), including those relating to COVID-19.

What?

AHS and the individual plaintiffs claimed they were defamed by Calgary mayoral candidate, Kevin Johnston in 2021 when, during his campaign and on his online talk show, he shared misinformation, conspiracy theories, and hate about AHS and the individual plaintiffs.

How?

The false statements included “all of you are criminals”, “AHS has gone out of their way to commit the following crimes... criminal trespass, criminal harassment, extortion, intimidation, and terrorism...”, “We’re going to have Nuremburg trials in Calgary folks”, and “We are going to ...bring these criminals who work for AHS to justice...they are going to go to prison, these are people who have committed heinous crimes against the people of Calgary.”

Johnston referred to one individual plaintiff as an “AHS Nazi,” a “terrorist,” a “useless individual,” “a horrible human being,” and an “alcoholic.” He also stated, “I intend to

make this woman's life miserable, I intend to destroy this woman's life ... she's going to jail... she's going to have to fight terrorism charges."

A New Tort!

The court recognized a new tort of harassment and determined that a defendant has committed this tort when they have:

- a) engaged in repeated communications, threats, insults, stalking, or other harassing behaviour in person or through any other means;
- b) that they knew or ought to have known was unwelcome;
- c) which impugns the dignity of the plaintiff, would cause a reasonable person to fear for her safety or the safety of her loved ones, or could foreseeably cause emotional distress; and
- d) caused harm.

The court observed that the fact that "harassment is a justiciable issue"; and that recognizing the tort of harassment, allows damages to be awarded in appropriate cases, a power that is "long overdue."

The court awarded the individual plaintiff general damages of \$300,000 for injury to her reputation; \$250,000 for aggravated damages, and \$100,000 in general damages for harassment.

Takeaway for Employers

We will be paying close attention to this decision as it is unclear whether other courts will adopt the same approach and whether any court will find employers vicariously liable for such behaviour.

In the interim, employers should have well-drafted anti-harassment policies and implement meaningful training on these policies for all employees, supervisors, and managers.

If you have any questions about this decision or your policies, please do not hesitate to contact ClientCare.