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Walsh and Mobil Oil – The Long-Running Saga Continues

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Decision commented on:
Walsh v Mobil Canada, 2012 ABQB 527

After several tribunal and court proceedings, taking place over the past 20+ years, Mobil was found to have discriminated against Delorie Walsh and to have retaliated against her for complaining by terminating her employment. There have been several blogs written about this case (see "Court of Appeal Rules in Walsh Case: End of a Seventeen Year Journey?"and "Justice Received After Nineteen Years Delay in Walsh Case: What's to blame?").

The current decision is an application for judicial review of the human rights tribunal's recent decision about remedies, costs and interest. Both Ms. Walsh and Mobil raised grounds of appeal of the decision of tribunal member B. Bryant.

Ms. Walsh raised the following issues (set out in para 29 of Justice B. Romaine's judgment):

> [29] Ms. Walsh's grounds of appeal are as follows:
> (a) The Tribunal breached its duty to act fairly
> (i) in having the same individual who initially dismissed Ms. Walsh's complaint conduct the hearings, giving rise to the apprehension of bias; and
> (ii) in declining to consider documents from "without prejudice" settlement discussions in the Walsh Costs Decision.
> (b) The Tribunal erred in law in
> (i) misapplying the principles for determining loss and failing to provide a remedy that would make the victim of discrimination "whole";
> (ii) failing to apply the proper test for causation;
> (iii) misinterpreting the right to equal pay for same or similar work;
> (iv) misapplying the principles of foreseeability as set out in *Chopra v. Canada (Attorney General),* [2007] F.C.J. No. 1134 (C.A.); and
> (v) miscellaneous other errors.
> (c) The Tribunal erred in failing to award Ms. Walsh all of her costs and expenses.
> (d) The Tribunal erred in making contradictory findings in the merits portion and the remedies portion of the hearing.

On cross-appeal, Mobil submitted that in awarding damages from the date Ms. Walsh was terminated to December 31, 2000, the Tribunal erred in (para 30):

(i) failing to properly consider Ms. Walsh's election to attribute her income losses after she was terminated to the motor vehicle accident, thus allowing an abuse of process;
(ii) failing to properly apply the law, interpret the evidence and follow her own findings of fact regarding the awards for damages for loss of income, loss of fringe benefits and loss of pension benefits;
(iii) setting the quantum of damages awarded in the time period between the first complaint and the date of termination;
(iv) misinterpreting and misapplying the law regarding general damages in the human rights context, thus awarding excessive, unreasonable and unprecedented general damages; and
(v) interpreting the Workers' Compensation Act sections 17(1) and 21(2) in an incorrect and unreasonable manner, and contrary to the intention of the Alberta legislature.

Justice Romaine (para 36) determined that the appropriate standard of review of the issues would be correctness "with some curial deference accorded to the panel on findings of fact." Further, the standard of review with respect to the Tribunal's cost decision would be reasonableness (para 47).

Justice Romaine found no error in the decision of the Tribunal (B. Bryant) to follow the dictates of the Alberta Court of Appeal (*Walsh v Mobil Oil Canada*, 2008 ABCA 268) regarding legal costs. However, Justice Romaine noted that B. Bryant's decision with respect to denying Ms. Walsh's personal costs ($30,508.56) did not contain adequate reasons, and thus referred this issue alone back to the Tribunal for further consideration.

All of the other issues raised by Mobil and Ms. Walsh were dismissed.

The discussion of these multiple issues is very thorough. The case consists of 131 paragraphs. It is perhaps helpful to read this discussion of these various issues, which might be useful in other human rights cases. However, I cannot help but be confronted with the fact that every issue in this case (both substantive and procedural) has been litigated to an almost absurd level. It is well beyond time that both of these parties move on without continued litigation on this matter.

This case is an extreme example of some of the criticisms of Alberta's human rights system. One overarching goal of the current system is to allow for relatively quick and private resolution of human rights issues, resulting in remediation and education. It must be remembered that in the vast majority of human rights cases, the matter is fairly quickly resolved by conciliation. Instead, in this case we see a highly legalized procedure that was very expensive (in money and personal cost) for the parties. It resulted in a lack of true justice (for either party) because of the inordinate delay. It is also interesting to note that equal pay is one of the key issues. By way of comparison, the federal human rights law deals with pay equity, and the federal system is also plagued by pay equity cases that have taken many years to resolve (see, for example, *Canada (Human Rights Commission) v Canadian Airlines International Ltd,* 2006 SCC 1). The other similarity between these cases is that they involve large corporations and the results could impact several staff and the bottom line of the company. Perhaps this is why the respondent companies use all legal steps available to resist the ultimate remedies, and thus the cases are finally resolved after some of the parties have retired or even died. One wonders if perhaps the solution would

be to use a different legal regime rather than human rights commissions to address equal pay and pay equity cases. Further, these cases are not illustrative of "typical" human rights cases and perhaps should not be relied upon to criticize the entire human rights system.

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