

# \$100,000 in human rights damages for restaurant workers

*3 former Muslim workers were forced to eat pork, other food while fasting – owners also mocked their language, race*

## — BACKGROUND —

**BY NOW**, employers and other organizations should be well aware of human rights legislation and the grounds under which people are protected from discrimination. And yet there are still examples of employers who seem to either not be aware of those grounds or simply don't care. Regardless of the reason, employers often find themselves in hot water over discriminatory practices.

One Toronto restaurant found itself on the hook for a hefty sum of human rights damages for its often blatant discrimination of three workers who originally came from Bangladesh. Employment lawyer Ronald Mincken discusses the case and the lessons employers can glean from it.

BY RONALD MINKEN |

**AN ONTARIO** employer has been ordered to pay almost \$100,000 to three former employees — who were Muslim and from Bangladesh — by the Ontario Human Rights Tribunal.

Three former employees of the Toronto restaurant Le Papillon alleged various grounds of discrimination against their former employer, including race, colour, ancestry, place of origin, ethnic origin and creed. The tribunal's decision consisted of a finding that the restaurant had discriminated against the employees on various grounds of the Ontario Human Rights Code and awarded the employees a total of \$98,592 in damages.

Each of the three employees, Abdul Malik, Arif Hossain and Mohammed Islam, worked at Le Papillon at the same time in kitchen-based positions. They immigrated to Canada from Bangladesh,

and each spoke Bengali as well as English, though the tribunal noted Islam "has the least facility with the English language." Additionally, each of the employees was an "adherent of Islam."

**The employee was worried about his employment, so he ate the pork, then went to the washroom where he vomited and cried.**

### Restaurant owner forced Muslim employees to eat pork

In March 2010, the owner of the restaurant approached Malik on two separate occasions and requested that he eat a pulled pork sandwich. Malik informed him that he could not eat pork as a re-

sult of his religious beliefs and practices. The owner insisted Malik eat the pork sandwiches as he was employed as a chef. Malik refused.

Despite Malik already refusing the owner's repeated request that he consume pork, and despite him justifying his refusal by explaining his religious beliefs and practices, in July 2010, the owner again requested that Malik eat pork and informed him it was his duty as a chef to try it.

Malik was concerned about his future employment should he not consume the pork, so he ate it. Immediately thereafter, he went to the washroom, vomited and began to cry. Malik testified at the tribunal hearing that he felt very guilty that he had violated his religious beliefs. He could not sleep that night, he was very upset and felt he would "face punishment" when he dies.

In addition to requiring Malik to eat pork, the employer also required Islam to eat pork in 2010 while he was fasting in observation of the Muslim holiday Ramadan.

When Islam explained to the owner that he was prohibited from eating pork due to his religion and he was fasting, the owner informed him that "if you make food, you have to taste it," as well as "if you are fasting you will be weak — you are coming here to work."

Further, the owner required Hossain to taste some soup while he was fasting in observation of Ramadan in 2010. Hossain initially declined to taste the soup, but the owner repeated his request. Hossain was worried about being fired and there-

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## — EMPLOYMENT LAW BLOG —

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The blog features discussion of topics such as workplace investigations, just cause for dismissal, second chances, and what makes a manager. You can view the blog at [www.employmentlawtoday.com](http://www.employmentlawtoday.com).



## CASE IN POINT: HUMAN RIGHTS

## Employee given time off for holiday, then called in

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fore tasted the soup, breaking his fast.

Additionally, the restaurant instituted an English-only rule in the kitchen, despite Islam's limited ability with the language and Hossain's and Malik's assistance by clarifying the employer's instructions in Bengali. At times, when the employees were communicating in Bengali in the kitchen, the owner would mock them by saying "blah blah."

On various occasions, the three employees also heard the owners indicating they wanted white staff and they also wanted "to clean the shit from the kitchen" by bringing in new staff, and that the owners would close down the restaurant for a period of time to accomplish this.

In September 2010, Hossain was given time off for the evening of Eid al-Fitr. However, on the evening of the religious holiday, the owner called him and indicated that he would have to come into work and if he did not come in he would be terminated. As a result, Hossain was required to cancel a party he had arranged at his home with 15 to 20 people.

#### Employees complained about treatment

As a result of the above actions by the owners, the employees wrote and delivered to the restaurant a letter of complaint in September 2010, as well as a further letter of complaint in November in response to changes that were being made at the workplace which affected the their work. Specifically, the changes resulted in the following:

- Malik was required to work 60 hours a week
- Hossain's hours were reduced by one shift per week as well as the duties he was performing
- Islam's shifts each week were reduced from five to four and the number of hours per week reduced from 35 hours to 25 hours
- New employees were hired, all of whom are white and Canadian

The restaurant did nothing in response to the employees' letters, other than rescind the proposed work schedule change.

Given the above conduct engaged in by Le Papillon's owners, the tribunal found the restaurant had discriminated against the employees on numerous grounds. The tribunal ordered damages for each of them as compensation for violation of their inherent right to be free



from discrimination, injury to their dignity, feelings and self-respect, including the continuing stress caused by failure to investigate their complaints of discrimination and compensation for loss of income. Specifically, the employees received the following:

#### Following the employees' letter of complaint, two workers' hours were reduced and one was required to work 60 hours per week.

- Malik received \$18,632 for loss of income and \$37,000 to compensate for violation of his inherent right to be free from discrimination, injury to his dignity, feelings and self-respect, including the continuing stress caused by failure to investigate his complaints of discrimination.
- Hossain was awarded \$7,920 for loss of income and \$22,000 to compensate for violation of his inherent right to be free from discrimination, injury to his dignity, feelings and self-respect, including the continuing stress caused by failure to investigate his complaints of discrimination.
- Islam was awarded \$1,040 for loss of income and \$12,000 to compensate for violation of his inherent right to be free from discrimination, injury to his dignity, feelings and self-respect, including the continuing stress caused by failure to investigate his complaints of discrimination.

#### Lessons for employers

While it is well known by employers that they are to ensure that human rights legislation is to be complied with at all times in the workplace, this deci-

sion demonstrates the large monetary amounts an employer may be faced with should a breach of the legislation be found to have occurred.

Employers must accommodate an employee's human rights at the workplace short of undue hardship, and be able to demonstrate that such accommodation was provided or that undue hardship would be experienced should the employer provide the necessary accommodation.

Additionally, it is not only a breach of the code which may result in an award of damages against an employer.

As this demonstrates, employers must also ensure they properly and thoroughly investigate any claims of an alleged breach of the code at the workplace, failing which additional damages may be awarded.

#### For more information see:

- *Islam v. Big Inc.*, 2013 HRTO 2009 (Ont. Human Rights Trib.).

About the Author

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