

Ontario Court Recognizes New Tort of Harassment – and Employee is Awarded \$141,000 in Damages

In one of the first of its kind, a recent Ontario Superior Court of Justice decision found an employer liable for the tort of harassment and awarded significant monetary damages. In *Merrifield v Canada (Attorney General)*, the Royal Canadian Mounted Police (“RCMP”) was ordered to pay general damages of \$100,000 and special damages of \$41,000 to a member of the RCMP for harassment and intentional infliction of mental suffering at the workplace.

Merrifield worked for the RCMP in antiterrorist and serious crime policing. Merrifield presented evidence at trial, which was ultimately accepted by the trial judge that proved that he was subjected to a decade-long campaign of harassment by the RCMP. Merrifield faced repeated unsubstantiated allegations of misconduct, which repeatedly led to formal investigations. All investigations cleared Merrifield of any wrongdoing. Further, Merrifield alleged that he suffered harassment and bullying at the hands of his superiors, and that the RCMP damaged his reputation and caused him significant emotional distress including depression. Merrifield sought damages for the tort of harassment, in addition to other claims.

The trial judge reviewed prior case law in British Columbia and Ontario in which the tort of harassment was discussed, although these cases were unrelated to a claim of workplace harassment. The trial judge found that harassment can be a cause of action in Ontario against an employer, and outlined the following test for harassment:

1. Was the conduct of the defendants towards the plaintiff outrageous?
2. Did the defendants intend to cause emotion stress or did they have a reckless disregard for causing the plaintiff to suffer from emotional stress?
3. Did the plaintiff suffer from severe or extreme emotional distress?
4. Was the outrageous conduct of the defendants the actual and proximate cause of the emotional distress?



The trial judge ultimately found that Merrifield had been harassed and bullied by his superiors, and that they had damaged his reputation and impaired his career advancement. The court also determined that the egregious conduct of the employer caused the plaintiff severe emotional distress including depression. The trial judge concluded that Merrifield had proven the tort of harassment, and he was awarded \$141,000 in total damages.

Key Takeaways: This decision demonstrates the significant financial consequences facing employers who fail to take workplace harassment complaints seriously. Most employers are already aware of their obligations under the applicable occupational health and safety legislation, which requires the development and implementation of policies and programs to deal with both workplace harassment and violence. However, this decision confirms that employees may also attempt to seek compensation as a result of workplace harassment by relying on the tort of harassment.

If you would like assistance or further information regarding your company's obligations regarding workplace harassment or if you have questions regarding occupational health and safety legislation, please contact e2r® to speak with an advisor.

