

## Broad Remedies Scope of the Human Rights Tribunal of Ontario

The Human Rights Tribunal of Ontario (HRT) has broad powers to award remedies to those who have experienced discrimination in the Province. How broad? Well, the case of *Fair v. Hamilton-Wentworth District School Board*, [2012 HRT 350](#) (CanLII) demonstrated just how significant the HRT's reach can be.

Sharon Fair (the "Applicant") was an employee of the Hamilton-Wentworth District School Board (the "Respondent") from 1988 to 2004. Initially hired as a casual employee in the role of a technician, Ms. Fair went on to move up the ranks and in 1994, Ms. Fair was made a permanent employee in the role of Supervisor, Regulated Substances, Asbestos. It was while within the supervisor role, Ms. Fair developed anxiety, and later, both depression and post-traumatic stress disorder. As a supervisor of the asbestos removal team, Ms. Fair was criticized for the way Ms. Fair was handling the asbestos removal. A Ministry of Labour representative explained that Ms. Fair, as the supervisor of the asbestos removal, could personally face a substantial fine for mishandling this process under the *Occupational Health and Safety Act*, [R.S.O. 1990, c. O.1](#). The resulting stress was more than Ms. Fair could manage, and Ms. Fair left the position with long-term disability benefits in place.

After two years, Ms. Fair was still unable to return to the old job; however, it was determined that Ms. Fair could resume working, but only in a position that was without the same kind of personal liability risk as the previous position encompassed. Per the *Fair* decision as above, the physician was quoted as stating:

[12] Eventually, the respondent obtained the report of its own physician, who provided his opinion after reviewing documentation about the job, interviewing the applicant on two occasions, and consulting with the applicant's treating physician. His conclusion was:



I would concur with [the treating physician's] opinion of her patient's restrictions and limitations. Specifically, Ms. Fair would not be able to function in a job which entailed responsibility for health and safety issues, nor any duties which would leave her at risk for personal liability. Outside these limitations and restrictions, Ms. Fair is otherwise capable of gainful employment, as she is not currently deemed to suffer from a psychiatric impairment sufficient to render her totally disabled.

As Sharon Fair was without a return to work, Ms. Fair was terminated thereby prompting the case to come to the Tribunal. In the decision, the adjudicator, Kaye Joachim, found the School Board failed to meet their obligations under the Ontario *Human Rights Code*, [R.S.O. 1990, c. H.19](#). Three overarching areas were cited. The first, *"The respondent failed to actively, promptly, and diligently canvass possible solutions to the applicant's need for accommodation"* references several deficiencies on behalf of the School Board including the failure to obtain expert advice, delays in meeting with Ms. Fair, and failure to accommodate Ms. Fair within another position. The second area reviewed by Adjudicator Joachim reviewed the Respondent's failure to look at available positions in the organization that the Applicant, Ms. Fair, could have performed. Lastly, the Respondent was criticized for failure to consider alternative employment positions, even though an expert determined that Ms. Fair could perform gainful employment provided those positions were without the personal liability risk that the previous supervisory position involved.

Ultimately, Adjudicator Joachim found the Hamilton-Wentworth District School Board had discriminated against Sharon Fair. An order was made for over \$400,000, which constituted nine years' back pay, and Ms. Fair was reinstated. The decision to reinstate Ms. Fair was appealed to the Ontario Court of Appeal per *Hamilton-Wentworth District School Board v. Fair*, [2016 ONCA 421](#); however, the court refused to overturn the decision of the adjudicator, by stating and citing:



[96] Moreover, the Divisional Court's reference to the labour relations context was not unreasonable or unusual. For example, the Tribunal in *Krieger v. Toronto Police Services Board*, [2010 HRTO 1361](#) (CanLII), espoused similar principles. This case involved an application by a terminated employee for reinstatement following alleged discrimination. In examining the issue of reinstatement, the Tribunal noted, at para. 182:

While reinstatement orders are rarely requested or ordered in human rights cases, they are “normally” ordered in arbitral cases where a violation of a grievor's rights has been found, unless there are “concerns that the employment relationship is no longer viable” *A.U.P.E. v. Lethbridge Community College*, [\[2004\] 1 S.C.R. 727](#), 2004 SCC 28 (S.C.C.) (CanLII), at para. 56. The goal of human rights legislation, which is remedial in nature, is to put the applicant in the position that he or she would have been in had the discrimination not taken place. See *Impact Interiors Inc. v. Ontario (Human Rights Commission) (1998)*, [35 C.H.R.R. D/477](#) (Ont. C.A.). Where viable, reinstatement is sometimes the only remedy that can give effect to this principle.

### Summary Comment

This case shows that the HRTO is empowered to issue an order to reinstate employment, even after a significant period passes. Furthermore, the compensation award in the amount of \$400,000 remains as one of the largest awards ever made by the HRTO.