



What's New in HR Law

Ontario Superior Court Awards \$285,000 to Employee for Supervisor's Violent and Harassing Conduct

February 6, 2023 | By [Stephanie Nicholson](#)

Bottom Line

In [Osmani v Universal Structural Restorations Ltd., 2022 ONSC 6979](#), the Ontario Superior Court of Justice (the "Court") held that an employee (the "Plaintiff") was constructively dismissed after he was subjected to violence and harassment by his supervisor. Universal Structural Restorations Ltd. (the "Company") was held vicariously liable for the supervisor's misconduct.

This case is notable for being the first employment case in Ontario to consider the tort of human trafficking. Although the human trafficking claim was dismissed, Justice Di Luca set out the relevant test and factors that may be considered in future cases assessing the tort.

Background Facts

The Plaintiff was employed with the Company as a general labourer. He was initially hired "off-the-books" prior to securing his status as a Temporary Foreign Worker.

Throughout the Plaintiff's 14 months' of employment, he was subjected to humiliating and degrading conduct by his supervisor at the Company. In particular, the supervisor referred to the Plaintiff using ethnic slurs or as "his bitch" and made sexual remarks about the Plaintiff's wife. The supervisor also

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made threats related to the Plaintiff's employment status, such as suggesting that he could send the Plaintiff back to his home country of Albania.

The Plaintiff was also repeatedly subjected to violence by his supervisor in front of his co-workers. Most notably, on one occasion, the supervisor punched the Plaintiff in the testicles. The strike was so significant that the Plaintiff's testicle had to be surgically removed. The Plaintiff did not file a harassment complaint but told both the Company's owner and office manager about the incident at an office party months later. The Company did not investigate the incident.

Later, the Plaintiff suffered a workplace accident when he fell 13-14 feet off of a ladder. He could not get up and the supervisor and the Company failed to call an ambulance, despite the Plaintiff's significant injury. The Company also produced a misleading investigation report and attempted to dissuade the Plaintiff from filing an injury claim with the Workplace Safety and Insurance Board ("WSIB"). Soon thereafter, the Company pressured the Plaintiff to return to work and, upon his return, assigned him to duties that were beyond his physical capabilities.

The Plaintiff brought an action for constructive dismissal and, amongst other claims, sought damages for human trafficking contrary to the *Prevention of and Remedies for Human Trafficking Act, 2017*.

The Decision

The Court held that the Plaintiff was constructively dismissed. The Court found that the Company had condoned an abusive work environment and engaged in a series of acts that poisoned the workplace. These acts included: failing to respond to the Plaintiff's repeated complaints about the supervisor's conduct; failing to investigate complaints or discipline the supervisor; and crafting a false narrative to blame the Plaintiff for the workplace accident.

The Court also held the Company vicariously liable for the supervisor's violence. The supervisor had struck the Plaintiff during a work meeting in front of other workers and supervisors. Due to these factors, the incident was more than an act of battery that simply occurred at the workplace; rather, the Company had created a scenario where the Plaintiff was under the direct control of his attacker, who was tasked with directing work placements for the Plaintiff and other employees. Furthermore, once the Company became aware of the battery, the Company did not investigate or discipline the supervisor, nor separate the Plaintiff from his supervisor.

With respect to the Plaintiff's fall, the Court held that the Company failed to enforce workplace policies designed to keep staff safe. The Court noted that the Company had produced a misleading investigation report, interfered with the Plaintiff's ability to obtain WSIB compensation, and failed to modify work tasks consistent with his medical restrictions.

Throughout the decision, the Court emphasized the vulnerable position of the Plaintiff as his work permit was tied to employment with the Company.

The Court dismissed the Plaintiff's claim for damages for the tort of human trafficking. The Court found that the evidence did not demonstrate that the Company's conduct was for the purpose of exploiting or facilitating the exploitation of a person trafficked. The Plaintiff had the same working conditions and remuneration as other employees. To the extent that the Company exerted control, influence, or direction over the Plaintiff, it was in the context of a regular employment relationship.

Ultimately, the Court ordered the Company and supervisor to cumulatively pay over \$285,000 to the Plaintiff. This damages award included: four months' common law reasonable notice, \$100,000 in

general and aggravated damages for the tort of battery; \$10,000 in general damages for the tort of assault; \$50,000 for violations of the Plaintiff's human rights; \$75,000 in moral damages; \$25,000 in punitive damages against the supervisor personally; and \$25,000 in punitive damages against the Company.

Check the Box

This case serves as an extreme reminder to employers to investigate all complaints and incidents of workplace violence and harassment. Employees must receive training on their employer's workplace violence and harassment policy and, under the Ontario *Occupational Health and Safety Act*, the policy must be reviewed, at minimum, on an annual basis. While the supervisor's misconduct was particularly egregious in this case, employers may be held liable and incur significant damages in any case where they fail to correct inappropriate behaviour and to provide a safe workplace.

This case also confirms that the tort of human trafficking is available in the employment context where labour trafficking has occurred, although the threshold to establish this tort is quite high. Employers should be mindful of the unique challenges and vulnerability experienced by temporary foreign workers and new immigrants in the workplace. As these types of workers may feel less comfortable bringing their concerns to Human Resources, employers may consider using more proactive measures to ensure a safe workplace.

Need More Information?

For more information or assistance with drafting, implementing, and enforcing workplace harassment and violence policies, contact [Stephanie Nicholson](#) at snicholson@filion.on.ca or your regular lawyer at the firm.



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