57 C.H.R.R. D/183

# McEvoy v. Best of Care Ltd.

Sharon McEvoy v. The Best of Care Ltd., Vincent Dalton, and the Department of Health and Community Services

Newfoundland & Labrador Human Rights Trib.

E. Breen Member

Heard: July 13-14, 2005
Judgment: July 14, 2005
Docket: 2263



Counsel: Mr. Barry Fleming, for Human Rights Commission

Mr. Herbert Edwards, for Ministry of Health and Community Services

Subject: Constitutional; Labour and Employment; Public

Human rights --- What constitutes discrimination -- Sex -- Employment -- Pregnancy and maternity leave -- Terminations and lay-offs.

Human rights --- Vicarious liability for discrimination -- Factors in determining vicarious liability -- Statutory liability.

Labour and employment law --- Employment law -- Nature of employment relationship -- Elements constituting relationship between employer and employee -- Existence of contract of employment -- Miscellaneous.

Cases considered by E. Breen Member:

Berry v. Manor Inn (1980), 1 C.H.R.R. D/152 (N.S. Bd. of Inquiry) -- referred to

Brooks v. Canada Safeway Ltd. (1989), 26 C.C.E.L. 1, [1989] 1 S.C.R. 1219, [1989] 4 W.W.R. 193, 59 D.L.R. (4th) 321, 94 N.R. 373, 58 Man. R. (2d) 161, 89 C.L.L.C. 17,012, 45 C.R.R. 115, 1989 CarswellMan 160, 10 C.H.R.R. D/6183, 1989 C.E.B. & P.G.R. 8126, 1989 CarswellMan 327 (S.C.C.) -- referred to

De Jong v. Horlacher Holdings Ltd. (1989), 10 C.H.R.R. D/6283 (B.C. Human Rights Council) -- referred to

Hajla v. Nestoras (1987), 8 C.H.R.R. D/3879, 1987 CarswellOnt 3492 (Ont. Bd. of Inquiry) -- referred to

Hazelwood v. Leask Agro Services (2004), 50 C.H.R.R. D/447, 2004 CarswellSask 948 (Sask. Human Rights Trib.) -- referred to

Imberto v. Vic & Tony Coiffure (1981), 2 C.H.R.R. D/392 (Ont. Bd. of Inquiry) -- referred to

Law v. Canada (Minister of Employment & Immigration) (1999), 170 D.L.R. (4th) 1, 1999 CarswellNat 359, 1999 CarswellNat 360, (sub nom. Law v. Canada (Minister of Human Resources Development)) 60 C.R.R. (2d) 1, 236 N.R. 1, [1999] 1 S.C.R. 497, 43 C.C.E.L. (2d) 49, (sub nom. Law v. Minister of Human Resources Development) 1999 C.E.B. & P.G.R. 8350 (headnote only) (S.C.C.) -- considered

Parry v. Vanwest College Ltd. (2005), 53 C.H.R.R. D/178, 2005 BCHRT 310 (B.C. Human Rights Trib.) -- considered

Saunders v. Kentville (City) Police Service (2004), 2004 CarswellNS 610, 51 C.H.R.R. D/323 (N.S. Bd. of Inquiry) -- referred to

Tulk v. Newfoundland (Minister of Health & Community Services) (2002), 42 C.H.R.R. D/225, 2002 CarswellNfld 64, 210 Nfld. & P.E.I.R. 101, 630 A.P.R. 101 (N.L. T.D.) -- considered

Varma v. G.B. Allright Enterprises Inc. (1988), 9 C.H.R.R. D/5290 (B.C. Human Rights Council) -- referred to

Vestad v. Seashell Ventures Inc. (2001), 41 C.H.R.R. D/43, 2001 BCHRT 38, 2001 CarswellBC 3247 (B.C. Human Rights Trib.) -- referred to

Winter v. Networth Management Inc. (Jan 1, 2000), O'Brien Arb. (Nfld. Bd. of Inquiry) -- considered

Statutes considered:

Health and Community Services Act, S.N. 1995, c. P-37.1

Generally -- referred to

Human Rights Code, R.S.N. 1990, c. H-14

Generally -- referred to

s. 9(1) -- referred to

Self-managed Home Support Services Act, S.N. 1998, c. S-13.1

Generally -- referred to

E. Breen Member:

1 Ms. Sharon McEvoy filed a complaint under section 9(1) of the *Human Rights Code* against The Best of Care Ltd. and Vincent Dalton (First Respondents) and Her Majesty in Right of Newfoundland and Labrador as repre-

sented by the Minister of Health and Community Services (Second Respondent). Ms. McEvoy alleges that she was discriminated against on the basis of her sex as she was dismissed from her employment as a result of her pregnancy/maternity leave.

**Facts:**

2 The basic facts of this case are not in dispute. Ms. Sharon McEvoy worked as a home support worker for Mr. Vincent Dalton from April 17, 2000 to August 5, 2001 in the community of Admiral's Beach, Newfoundland and Labrador. Ms. McEvoy's wages were paid by The Best of Care Ltd. Both Mr. Dalton and the Department of Health and Community Services provided the funds for Ms. McEvoy's wages (as discussed further below). The Best of Care Ltd. is a private business incorporated in 1995 that is licenced to hire and provide home care workers for Eastern Newfoundland and Labrador and St. John's. Ms. Gloria White is the owner of The Best of Care Ltd. The Best of Care Ltd. is not regulated under the *Self Managed Home Support Services Act*. Home support as offered by The Best of Care Ltd. is a service governed by the *Health and Community Services Act*.

3 As Mr. Dalton's home support worker, Ms. McEvoy undertook the following duties: light housekeeping and cleaning; preparation and serving of meals; and supervision of Mr. Dalton's medications. Ms. McEvoy worked three shifts throughout the day: 8:30 -- 10:00 am; 12:30 -- 1:30 pm; and 4:00 -- 6:00 pm, centering around meal times. Ms. McEvoy worked 6 days a week and was paid for 4.5 hrs per day. All evidence supports that Ms. McEvoy and Mr. Dalton had a positive relationship and that there were no problems. There were no complaints about Ms. McEvoy's job performance throughout her employment.

4 Ms. McEvoy became pregnant and on August 5, 2001 (the same day her baby was born) she began her maternity leave. Ms. McEvoy informed both Ms. White and Mr. Dalton's daughter, Theresa Bungay, that she would be taking leave. Mr. Dalton requested a specific home care worker, Mrs. Patsy Power, to replace Ms. McEvoy while she was on leave. The Best of Care Ltd. hired Mrs. Power to replace Ms. McEvoy. Ms. McEvoy testified that Ms. Bungay asked her to stay off on leave long enough for Mrs. Power, the replacement worker, to get enough hours to qualify for employment insurance.

5 On December 17, 2001 Mr. Dalton wrote a letter to Ms. White requesting that Mrs. Power be kept on as his home support worker until February 28, 2002 or if possible, beyond. Ms. McEvoy contacted Theresa Bungay around Christmastime to ensure that her work return date was January 2, 2002. Ms. Bungay told her that the family had told The Best of Care Ltd. that they wished to keep Ms. Power on until February 28, 2002 and said that Gloria White was supposed to have called Ms. McEvoy to tell her. That night, Ms. McEvoy called Ms. White and Ms. White confirmed the family's wishes. Sometime between the end of January and mid-February, Ms. McEvoy called Ms. White regarding a return date. Ms. White told Ms. McEvoy to return to work on March 1, 2002.

6 On the morning of March 1, 2002, Ms. White called and told Ms. McEvoy to return to work on March 4. Sometime on March 1, 2002 Mr. Dalton wrote to Ms. White to notify her that as of 12:30 pm on that date he intended to retain Mrs. Power as his permanent care giver and that he expected the agency to abide by his wishes. He asked Ms. White to contact both Ms. McEvoy and Mrs. Power to let them know his wishes. Mr. Dalton stated in his letter that Mrs. Power had provided him with a higher level of care. Though Ms. White had no issues with respect to Ms. McEvoy's job performance, she felt that she had no choice but to abide by Mr. Dalton's wishes. That evening, Ms. White told Ms. McEvoy that Mr. Dalton's family wished to keep Mrs. Power as his permanent home care worker. Ms. White on behalf of Best of Care Ltd. offered Ms. McEvoy other employment in June/July in Riverhead. Ms. McEvoy did not accept as she was already working and shift work in a different community would be too difficult.

7 In August 2001 Ms. McEvoy was earning $7.29 per hour including vacation pay, 27 hours per week. She found work again on May 23, 2002. Ms. McEvoy was out of work from March 1, 2002 to May 22, 2002.

8 Ms. McEvoy testified that she was extremely upset by losing her job and that she enjoyed a close relationship with Mr. Dalton. At the time of her dismissal Ms. McEvoy had a baby and a 6 year old son. Ms. McEvoy lived in a small community and people asked her what she had done wrong to result in the dismissal.

**Issues:**

9

(1) Was Ms. McEvoy discriminated against on the basis of her sex when she was terminated from her position?

(2) If so, can the Respondents establish a defence to the discrimination as permitted by the Human Rights Code?

(3) If not, what remedy is appropriate?

(4) Who is liable for the discrimination?

**Was there sexual discrimination?:**

10 Discrimination based on pregnancy is equivalent to discrimination based on sex (See *Brooks v. Canada Safeway Ltd.* (1989), 59 D.L.R. (4th) 321 (S.C.C.)). As noted by the Court, "Discrimination on the basis of pregnancy is a form of sex discrimination because of the basic biological fact that only women have the capacity to become pregnant." Further, the failure to allow a woman who has taken maternity and parental leave to return to work at the conclusion of her leave can be discrimination on the basis of sex (see *Hazelwood v. Leask Agro Services* (2004), 50 C.H.R.R. D/447 (Sask. Human Rights Trib.)).

11 The burden of proof first lies with Ms. McEvoy as complainant to establish on the balance of probabilities that she was the subject of discrimination by the Respondents on the basis of sex (pregnancy) as a result of her dismissal. Ms. McEvoy must establish that (1) she took maternity leave; (2) that the Respondents refused to continue to employ her; and (3) It is reasonable to infer that her maternity leave was a factor in that refusal (See *Parry v. Vanwest College Ltd.*, [2005] B.C.H.R.T.D. No. 310 (B.C. Human Rights Trib.) at para. 61). Pregnancy or the taking of maternity leave need not be the sole factor in the decision to terminate to constitute discrimination (See *Vestad v. Seashell Ventures Inc.*, 2001 BCHRT 38 (B.C. Human Rights Trib.) at para. 39). If Ms. McEvoy is able to establish discrimination on the prima facie basis then the burden shifts to the Respondents to show that they were justified in not continuing to employ Ms. McEvoy and that they fulfilled their duty to accommodate to the point of undue hardship (See *Saunders v. Kentville (City) Police Service*, [2004] N.S.H.R.B.I.D. No. 9 (N.S. Bd. of Inquiry) at para. 66).

12 I find that based on the evidence presented, it is reasonable to infer that Ms. McEvoy's maternity leave played a role in the termination of her employment. While Ms. McEvoy was off on maternity leave, Mr. Dalton decided that he preferred her replacement worker, Mrs. Power. Had Ms. McEvoy not taken maternity leave, she would likely have continued to work for Mr. Dalton as there were no complaints about her work. All evidence supports that she was a good worker and the two enjoyed a positive relationship. It was because Ms. McEvoy went on maternity leave that Mrs. Power was hired to replace her.

13 I therefore find that Ms. McEvoy has established a prima facie case of discrimination on the basis of her sex.

14 The burden therefore shifts to the Respondents to establish that Ms. McEvoy's termination resulted from the expression of a limitation, specification, or preference based on a good faith occupational qualification. In this case,

the Respondents lead evidence to the effect that Mr. Dalton preferred Mrs. Power to Ms. McEvoy because he was more familiar with Mrs. Power and more comfortable with Mrs. Power providing personal care that he did not require prior to Ms. McEvoy's leave. Theresa Bungay testified that her father's health deteriorated after Mrs. Power replaced Ms. McEvoy. Ms. Bungay stated that her father had gall bladder surgery and required greater personal care. Mr. Dalton knew Mrs. Power for 25-30 years and was more comfortable with her. Ms. White similarly testified that during Mrs. Power's replacement term Mr. Dalton's care plan changed. At first, when Ms. McEvoy was his attendant, the duties included light housekeeping and meal preparation. After Mrs. Power came on, and after Mr. Dalton had gall bladder surgery, he required personal care, i.e. assistance in bathing and in the washroom generally. Mr. Dalton grew accustomed to Mrs. Power doing his personal care. Additionally, and importantly to Mr. Dalton, Mrs. Power cooked traditional meals that Mr. Dalton preferred.

15 In this case, the Respondents are not asserting that there was an attempt to accommodate Ms. McEvoy. The Respondents' position is that Ms. McEvoy's dismissal had nothing to do with her pregnancy or maternity leave and there is no prima facie case of discrimination. The Respondents submit that Mr. Dalton preferred Ms. McEvoy's replacement worker and that The Best of Care Ltd. simply followed his wishes in dismissing Ms. McEvoy.

16 The preference of an employer's clients or customers is not a defence to discrimination [See *Berry v. Manor Inn* (1980), 1 C.H.R.R. D/152 (N.S. Bd. of Inquiry) at D/153; *De Jong v. Horlacher Holdings Ltd.* (1989), 10 C.H.R.R. D/6283 (B.C. Human Rights Council); *Varma v. G.B. Allright Enterprises Inc.* (1988), 9 C.H.R.R. D/5290 (B.C. Human Rights Council); *Imberto v. Vic & Tony Coiffure* (1981), 2 C.H.R.R. D/392 (Ont. Bd. of Inquiry); *Hajla v. Nestoras* (1987), 8 C.H.R.R. D/3879 (Ont. Bd. of Inquiry)].

17 Though Mr. Dalton's health may have deteriorated during Mrs. Power's tenure I note that there was never an official reassessment of the care plan. Olive Walsh of the Eastern Regional Integrated Health Authority, Bay Roberts, testified that if the level of care changed over time (and even if the number of hours did not change) then this would be documented by a reassessment completed by the case manager. No such reassessment was completed in this case. Further, the hours of care and the basic nature of the care provided did not change. Though Mr. Dalton may have required care of a more personal nature, I find that Mr. Dalton's reason for asking that Mrs. Power remain his home support worker was a matter of personal preference. He simply preferred Mrs. Power to Ms. McEvoy. This case can be distinguished from *Moyles v. Newfoundland (Ministry of Health and Community Services)* in that the care plan in *Moyles* changed from a live-in care plan to a 24 hour per day plan. The client's deterioration required an additional 12 hour night shift that the live-in plan provided by the former worker did not accommodate. Further, there was a significant break down in the relationship between the worker and the family which the Board found was the basis for the decision not to hire Ms. Moyles for the new respite position.

18 I therefore find that the Respondents have not met the burden upon them to establish a defence. During Ms. McEvoy's term, there was no complaint about her work. The reason she lost her job is because she became pregnant and required time off and she was replaced by the maternity leave worker.

19 I further find that in the context of the analysis set out in *Law v. Canada (Minister of Employment & Immigration)*, [1999] 1 S.C.R. 497 (S.C.C.) Ms. McEvoy's human dignity was demeaned by the dismissal. As noted in *Parry, supra*. at para. 75:

> For the reasons given in Brooks, women in the workforce who require time away from the workplace to give birth and care for newborn infants are members of an historically disadvantaged group. Membership in such an historically disadvantaged group is described in Law as "probably the most compelling factor favouring a conclusion that differential treatment imposed by legislation is truly discriminatory": at para. 63. This is a strong contextual factor favouring a finding that Ms. Parry's human dignity was demeaned...

20 Having found that discrimination is established in this case, the question becomes who is liable for damages

and the quantity of damages owed to Ms. McEvoy.

**Who was Ms. McEvoy's Employer?:**

21 Upon being hired, it was Mr. Dalton's family who arranged for Ms. McEvoy to become his home support worker. Ms. McEvoy signed a written employment contract with The Best of Care Ltd., including a hiring form with a start date and rate of pay, confidentiality forms, and delegated nursing function forms. Ms. McEvoy would call The Best of Care Ltd. and report her hours. Ms. McEvoy was paid by The Best of Care Ltd. on the 1st and 15th of each month. If Ms. McEvoy required time off she would contact Mr. Dalton directly or Ms. Bungay (Mr. Dalton's daughter) -- she did not contact The Best of Care Ltd. Only once did Ms. White come to check on Ms. McEvoy at Mr. Dalton's. Ms. White testified that Ms. McEvoy received one formal evaluation and that it was positive.

22 Ms. White provided evidence as to the operation of the agency, its relationship to the Department of Health, its clients and the home care workers. Ms. White described the process of how Ms. McEvoy was placed with Mr. Dalton. Ms. White met with Mr. Dalton when he became a client in April 2000. Mr. Dalton was assessed by Health and Community Services social worker Donna Hearn. This assessment provided the number of approved home care hours for the Mr. Dalton. Ms. White testified that Mr. Dalton had a choice of his home care worker and that most clients personally choose their worker. Mr. Dalton requested Ms. McEvoy and she was then hired by The Best of Care Ltd. To be hired by The Best of Care Ltd., home support workers must be licenced by Health and Community Services in that they must be bondable; provide a first aid certificate; do required training; provide references; and complete a medical. Ms. White testified that her agency must follow the guidelines of the Department of Health and Community Services. Ms. White described the Agency's responsibilities as follows: to hire the home care worker; to follow the guidelines of Health and Community Services; to keep in contact with the client and family; to talk to workers when they call in their hours; to supervise and deal with problems (in constant contact with client and family); and to complete payroll, including making deductions for all employees.

23 Ms. McEvoy had no contact with the Regional Health Care Board or the Department of Health during her employment. On occasion, she spoke with a Department of Health and Community Services social worker, Donna Hearn, who was assigned to Mr. Dalton.

24 Theresa Bungay testified that she acted on her father's behalf and chose to use The Best of Care Ltd. Agency to provide home care for two reasons: (1) to avoid difficulties dealing with employee deductions (payroll) and (2) to avoid employee problems and have the agency address them. Olive Walsh testified that although a client has the choice of his or her home care worker, if there is a problem between the two then the client can choose to go into self-managed care or go to another agency.

25 Una Tucker of the Department of Health and Community Services testified that the role of the Department in relation to agency home care is to set policy in the approval process (references, training, medicals, certificates) and to determine the wages of home care workers. Agencies are approved through regional boards -- not the department. Ms. Tucker testified that the Department plays no role in the hiring or firing of workers.

26 Olive Walsh, Assistant CEO of the Eastern Regional Integrated Health Authority, Bay Roberts, is responsible for the implementation of program policy development in the Program Divisions of the Board. The Board is responsible for the provision of all services for children, the disabled, hospitals, etc. In early 2000, the Board became responsible for the licencing, auditing and annual approval of home support agencies. Ms. Walsh outlined the approval process for individual clients. Once clinical and financial criteria are met, a letter of approval is given to the client. During the assessment, the client indicates whether they want self-managed or agency care. Ms. Walsh testified that she never had to deal with the termination of an employee before.

27 Mr. Dalton paid a percentage of his home care in the amount of $375.00 per month. The total cost of his home

care is approximately $1100-1200 per month. The Eastern Regional Integrated Health Authority pays the remaining amount to The Best of Care Ltd. out of money allocated to it by the Department of Health and Community Services. The Authority determines what the client's share is and what it will supplement per month based on a financial and clinical assessment of the client and a province-wide formula.

28 Taking into account the evidence as outlined by the above noted individuals and the relationships between Ms. McEvoy, Mr. Dalton and Ms. Bungay, The Best of Care Limited, the regional authority and the Department of Health and Community Services, I find that Ms. McEvoy's direct employer was The Best of Care Ltd. Mr. Dalton and his family were clients of the agency and chose agency care so that they would not have to take on the responsibilities of the employer. When Mr. Dalton contacted Ms. White to communicate his wish to dismiss Ms. McEvoy, Ms. White as the employer should have refused the request and informed Mr. Dalton that such an action would be discriminatory. Mr. Dalton should have then been informed that if he was not happy with the agency's decision then he had the option to go into self-managed care or find another agency. Instead, Ms. White dismissed Ms. McEvoy based on her belief that Mr. Dalton's personal preference was determinative of the issue. In doing so, I find that Ms. White acted with no malice, but simply out of inexperience in dealing with such a situation. Ms. White should have requested the assistance of the Board or Department in dealing with the issue but there is no evidence that she did so. In fact, the Department and Board should have provided training to the agency with respect to human rights issues and the agency's responsibilities in relation to same.

**Vicarious Liability of the Second Respondent:**

29 In *Tulk v. Newfoundland (Minister of Health & Community Services)* (2002), 42 C.H.R.R. D/225 (N.L. T.D.) the Supreme Court upheld the ruling of a Board of Inquiry that held the Respondents liable for discrimination based on pregnancy against the complainant Tulk. In that case, the home support arrangement was governed under the *Self-Managed Home Support Services Act.* There was no agency involved but rather the client hired the worker and the Department alone provided funds for wages. The Board of Inquiry found that the Department was vicariously liable for the damages:

> ...while the Department did not exercise any direct control over the complainant, it did provide the funds for her remuneration, and received an indirect benefit from the complainant's provision of services to the second respondent. The Department also retained the right to withhold the funds for the complainant's renumeration if they did not believe she was properly providing home care services, which would effectively result in her termination. The Department exercised some control in the hiring of home care workers, in prohibiting the hiring of close relatives by the applicants. While Roseanne Wilson was required to obtain an employee number with Revenue Canada, she was required to send a copy of her records and remittances to the Department. The Department did not have a direct employment relationship with the complainant, but I find that it did exercise some control over the terms and conditions of her employment....
>
> The Department utilized the complainant to fulfill its mandate and obligation to provide services to persons with disabilities. In keeping with the broad and purposive approach to be taken in interpreting human rights legislation, and upon careful consideration of the evidence presented during the hearing, and the authorities submitted, I therefore find that the first respondent employed or utilized the complainant such that the first respondent falls within the meaning of an "employer" in the Code. While the first respondent did not directly terminate the complainant's employment, in violation of the Code, it is vicariously liable for that discrimination.

30 The Supreme Court of Newfoundland upheld the adjudicator's findings and stated at paragraph 19 that:

> In my view, while the characterizations of these findings may remain arguable, there is a corresponding obligation of the Department under its legislative mandate, on the one hand, and the fulfilling of that obliga-

tion by Ms. Tulk, on the other. At the same time as the Department pays money to have that obligation performed, Ms. Tulk receives that money upon performing that obligation.

31 Based on the testimony of Una Tucker and Olive Walsh it is clear that the Department of Health and Community Services is ultimately responsible for home support services in the Province and the establishment of policies that govern the operation of agency home support services. The Regional Authority is utilized by the Department to deliver the program. Though the Department is not directly involved in employee hiring or firing, it does establish requirements and basic guidelines for the employment of home support workers and provides primary funding for wages, which are allocated through the Regional Authority. I find that the reasoning utilized in *Tulk* is applicable in this case. That Mr. Dalton utilized an agency as opposed to self-managing his home care does not change the fact that the Department has a responsibility to provide home care; benefited indirectly from the service provided; was the primary funder of the service; is primarily responsible for developing policies for the service and its delivery through the Regional Authority; and formed policy that pertained to the employment of home care workers. I find that by applying the liberal interpretation of the term "employer" as espoused by the Supreme Court of Newfoundland in *Tulk*, the Department is vicariously liable for the discriminatory actions of The Best of Care Ltd.

**Damages:**

32 Though I find that The Best of Care Limited was Ms. McEvoy's direct employer, I find that the Department of Health and Community Services is vicariously liable and should be jointly and severally liable for any damages. I note that the Department should have made clear to all agencies that they are required to abide by the *Human Rights Code*. Also, agencies should have been provided with direction on how to deal with human rights issues in relation to the termination of employees. As "client preference" was an accepted practice and recognized by both the agency, Board and Department, the potential of a human rights issue arising should have been recognized. There was no evidence called at the hearing to establish that the Department or Board ever provided policy, guidance or direction on human rights issues to agencies.

33 Ms. McEvoy was dismissed from her employment effective March 1, 2002 and did not again find work until May 22, 2002. In August 2001 Ms. McEvoy was earning $7.29 per hour including vacation pay, 27 hours per week. I therefore find that Ms. McEvoy is entitled to $2361.96 in lost wages.

34 In relation to general damages, Counsel for the Human Rights Commission has submitted that the amount of $4,000.00 is reasonable in this case. Counsel for the Second Respondent submitted that the Commission did not present any evidence that would justify general damages in this case. The caselaw generally supports that the range of general damages in cases of this nature is from $2000.00 - $10,000.00.

35 I find that Ms. McEvoy's dismissal resulted in an affront to her human dignity and I accept that she suffered, mentally, emotionally and financially, as a result. In *Winter v. Networth Management Inc.* [(Jan 1, 2000), O'Brien Arb. (Nfld. Bd. of Inquiry)], CHRR Doc. 00-027, the complainant was awarded $3,000.00 in general damages to compensate for the mental anguish associated with her termination. Ms. Winter was terminated in circumstances very similar to Ms. McEvoy and was out of work for 6 months after. I therefore award Ms. McEvoy $3,000.00 in general damages. The Best of Care Ltd. and the Department of Health and Community Services will be jointly and severally liable for both the lost wages and the general damages.

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