



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Caesar Lewis

Applicant

-and-

Sugar Daddys Nightclub

Respondent

DECISION

Adjudicator: Alison Renton
Date: March 17, 2016
File Number: 2014-19766-I
Citation: 2016 HRTO 347
Indexed as: **Lewis v. Sugar Daddys Nightclub**

APPEARANCES

Caesar Lewis, Applicant)	Sydney Osmar, Student-at-Law,
)	and Cornelia Mazgarean, Counsel
)	
)	
Sugar Daddys Nightclub, Respondent)	No one appearing
)	
)	

[1] This Application, which was filed January 2, 2015, alleges discrimination with respect to gender identity, gender expression and sexual orientation because of goods, services and facilities contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as

Code The applicant identifies as a transgender neutral questioning transgender male. His Application is about what occurred when he and some of his friends attended the respondent, a nightclub, during the late hours of January 4, 2014 and early d early -6(ETBT5t21(a)-61 0 0 1 72.)-6(f)28()-159(Ja)-d s(y)63()-159(4)-6(,)28()-27(t)55t21

another identifies as a transgendered male. After a period of time, each needed to use
hroom.

[11] Previously, the applicant has used the me He
testified that he feels , and
prefer because he identifies as male. Further, he has had
s , including stares and negative
comments.

[12] As they were not able to use the urinals, the applicant and his male friend
entered the washroom

get your disgusting asses out of this club
and shirt and proceeded to drag him out of the washroom, through the entire club, and
out the front door. The applicant was tossed out of the nightclub and felt like
not dragged out.

[16] The incident attracted the attention of numerous people in the nightclub. The
excessive force and inappropriate
language.

[17] As the applicant and his friend stood outside, they watched the security officer
speak to two other security officers. All three of the officers began to laugh and point in
the direction of the applicant and his friend.

[18] One of the other security officers approached the applicant and his male friend
passport. The applicant and his male friend attempted to reiterate that it was their right

[19]

[27] The next day, the applicant was still not feeling well and attended the hospital. A copy of the hospital report, noting some physical injuries, was entered as an exhibit.

[28] The applicant also attended a police station in Toronto, where the applicant was then living, where he was advised to report the assault to the Peel police, given the location of the respondent. The applicant got a drive to a Peel police station a couple of days later where he met with an officer. A copy of the police occurrence report was entered as an exhibit. The applicant did not testify about what, if anything, happened as a result of reporting this incident to the police.

[29] The applicant testified about the impact that the incident with the respondent had on him. He stated that he grew up with a supportive family who let him express himself freely. His male friend had started transitioning, but the applicant had not yet started. After the incident at the nightclub, he felt very discouraged about who he was, who he was transitioning to be, and he did not feel good about himself. He was questioning and is afraid to transition because of what happened.

[30] The applicant said that he did not feel that he had been treated fairly or like a human being by the respondent. Things could have been dealt with or handled differently, he stated. Now when he is out, he tries not to use the washroom, or he uses public washrooms that are single use such as those found at coffee places or gas stations.

[31] After this incident, he tried to attend some counselling, but did not feel it was a good fit as it was about lesbians, and he is not a lesbian. He continues to be on a waiting list for trans counselling and that list is very long. He and his male friend who also attended the respondent used to speak to youth at transitional classes, but he has stopped attending those. He does not go out as he did previously, and friends and family say that he is now more introverted. He thinks that he may be depressed, but has not been diagnosed with depression.

[32] The applicant seeks \$15,000 as monetary compensation for injury to dignity,

feelings and self-respect. He also seeks \$840 for his winter jacket that was not returned to him, \$650 for the loss of jewellery, and training for the respondent specific to gender expression and diversity as the respondent is still operating. The applicant noted that the respondent has not taken his issues seriously, as evidenced by its lack of participation in the process.

THE LAW AND ANALYSIS

[33] As I have determined that the respondent has chosen not to participate in the hearing, I have placed no reliance upon the Response. Despite this, the applicant still has the burden of proving on a balance of probabilities that a violation of the *Code* has occurred. A balance of probabilities means that it is more likely than not that a violation has occurred. Clear, convincing and cogent evidence is required in order to satisfy the balance of probabilities test. See *F.H. v. McDougall*, 2008 SCC 53 at para. 46.

[34] In order to establish a case of discrimination, an applicant must prove that: (1) he was a member of a group protected by the *Code*; (2) that he was subjected to adverse treatment; and (3) that his gender identity, gender expression, or sexual orientation were factors in the adverse treatment. See *Shaw v. Phipps*, 2010 ONSC 3884 at para. 47, upheld 2012 ONCA 155, and *Peel Law Association v. Pieters*, 2013 ONCA 396 at para. 56.

[35] Section 1 of the *Code* states:

Every person has the right to equal treatment with respect to services, good and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

[36] _____ were added to the *Code* in 2012 pursuant to _____ (*of Gender Identity or Gender Expression*), 2012, which received Royal Assent on June 19, 2012. The purpose in adding these grounds to the *Code* was to address a perceived

concepts. Some refuse to accept the concepts, and actively oppose the inclusion of individuals who fall within these *Code* protections into society. The Tribunal has recognized that transgendered persons have historically been a disadvantaged group who face extreme social stigma and prejudice in our society. See, for example, *XY v. Ontario (Government and Consumer Services)*, 2012 HRTO 726 at para. 165. Many do accept trans people and other gender non-confirming individuals, but find the concepts new, confusing, and difficult to integrate into traditional society, such as washrooms, locker rooms, change rooms and other gender-specific services and facilities.

[39] The law on these *Code* grounds is constantly developing, in all social areas, as new issues are raised and considered.

[40] In *Vanderputten v. Seydaco Packaging Corp.*, 2012 HRTO 1977, an application which

the *Code*, the Tribunal found that the applicant was discriminated against on the basis of sex in employment when she transitioned from male to female. The applicant was subjected to a poisoned work environment, through harassing comments about her

dismissed because of her sex. Amongst other remedies, the Tribunal ordered the respondents to pay \$22,000, which was a lower amount than what would have been

insubordinate behaviour in the workplace.

[41] In *XY*, above, the
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combined with the physical actions of removing the applicant

were different ways the respondent could have addressed the issue of him using the ashroom with him if it felt there was a problem.

[60] While I may have awarded more given the circumstances of this case, the applicant has asked for \$15,000 as monetary compensation for injury to dignity, feelings and self-respect. Considering the objective and subjective factors set out above, I find no basis to award less than the \$15,000 requested, and I order accordingly.

[61] I also find it appropriate to order that the respondent provide, within six months of this Decision, human rights training to its employees, management, and staff, including security guards, officers or bouncers, specifically on the issues of gender expression, gender identity and sexual orientation. The respondent is directed to provide al representatives.

ORDER

[62]