

## ONTARIO COURT RULES THAT EFFECT, NOT MOTIVATION, IS THE TEST FOR DISCRIMINATION

*Smith v. Ontario (Human Rights Commission)*, [2005] O.J. No. 377 (S.C.J. (Div. Ct.))

On February 28, 2005, the Ontario Superior Court of Justice reaffirmed the principle that in an allegation of discrimination in the workplace, it is not the motivation or knowledge of the employer that is in issue; but the effect of the discrimination on the complainant.

The Court reversed the decision of the Ontario Human Rights Tribunal which found that while the complainant, a black employee, was subjected to a poisoned workplace, the employer was not wilful or reckless in infringing the complainant's rights to be free from such an environment and its decision to dismiss him was not racially motivated. The employer argued that the complainant was dismissed as a result of a customer complaint. Accordingly, the complainant was not awarded compensation for mental anguish or lost wages. The Tribunal did, however, award general damages in the amount of \$8,000 for the period in which the complainant was subjected to a poisoned workplace.

In the Court's view, the Tribunal's findings of fact were unreasonable. In addition, the Tribunal's failure to provide a reason for the finding that the employer was not wilful or reckless was an error in law. The Court stated that where termination occurs within a poisoned work environment, a proper consideration of whether the termination was discriminatory requires that the termination be examined in that context.

The Court found that the poisoned work environment the complainant was subjected to included being called names such as "Kunta Kinte" (a slave name from the movie "Roots") and "Congo". In addition, the complainant overheard an employee comment, "Two hundred years ago, we would have told him what to do".

Based on these facts, the Court determined that the only finding available to the Tribunal was that the employer was "at least reckless in [its] infringement of [the complainant's] rights to be free from the poisoned atmosphere". Furthermore, the Court found that had the Tribunal properly focused on the effect of the discrimination rather than the employer's motivation or knowledge, it would have concluded that race was at least a factor in the complainant's dismissal.

Accordingly, the Court awarded the complainant \$10,000 in damages for mental anguish and \$25,000 for lost wages.