

Complainant Allowed to Participate in Wrongful Dismissal Claim of Her Alleged Harasser

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In an unusual decision, the Ontario Superior Court has allowed a complainant in a workplace sexual harassment investigation to participate in the wrongful dismissal trial of her alleged harasser.

The plaintiff in this case, Mark Render (Render), is seeking damages from his former employer, ThyssenKrupp Elevator (Canada) Limited (ThyssenKrupp), alleging that he was wrongfully terminated from his employment. ThyssenKrupp takes the position that it had just cause to terminate Render's employment after Render engaged in sexually inappropriate behaviour toward a colleague, Linda Vieira (Vieira).

Vieira sought to intervene in the wrongful dismissal action on the basis that she had an interest in the subject matter of the proceeding and could be adversely impacted by the outcome as she remained an employee of ThyssenKrupp. Specifically, Vieira advised the Court that she believed that a finding that Render had been wrongfully terminated could send a message to her colleagues that her allegations against Render were not credible or even that the type of behaviour she had endured from Render was permissible.

The Court accepted Vieira's arguments. Interestingly, the Court found support for Vieira's concerns in the very manner in which Render's counsel had questioned her on the affidavit she filed in support of the motion to intervene. It was clear to the Court from the cross-examination conducted by Render's lawyer that Render did intend to attack Vieira's credibility at trial and that he would aggressively call into question her reputation and integrity. Therefore, Master Graham found that Vieira had met the test for intervening in the action as a party but limited her counsel's participation to steps in the proceeding that directly impacted her interests. Vieira's lawyer would be permitted to make opening and closing statements, to cross-examine Render on matters that related to Vieira's credibility and would also be permitted to object to questions asked of her on cross-examination and re-examine, if necessary.

Successful applications to intervene in wrongful dismissal trials are rare in Ontario. However, the circumstances that led this claim by Render – namely, a just cause termination following an investigation into claims of sexual harassment – are all too common. It will be very interesting to see if the decision in this case along with the changing public perception of the impact of sexual harassment on the workplace and on individual complainants prompts more complainants to take similar action.

A note of caution for any potential intervenors: Master Graham specifically stated that Vieira would not have been permitted to intervene had she left her employment with ThyssenKrupp, which implies that a general

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concern regarding one's credibility and integrity will not be sufficient to establish an interest in a claim such as this one.

[A link to the full decision in *Render v. ThyssenKrupp Elevator \(Canada\) Limited*, 2018 ONSC 3182 can be found here.](#)

For further information, please contact Nathaniel Marshall or any other member of the Employment & Labour Group.

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