

Margaret Wente (26 February). The rights revolution run amok. The Globe and Mail, A.17. Retrieved August 29, 2008, from Canadian Newsstand Major Dailies database. (Document ID: 1434925491).

Here's a recent case that came before the Human Rights Tribunal of Ontario. It deals with employment discrimination. Was justice done? I'll sum it up and let you be the judge.

In 2001, a man named Paul Lane was interviewed for a job with an Ottawa consulting firm, ADGA, to test artillery software for a Department of National Defence contract. It was a highly specialized desk job involving tight deadlines and high stress. No problem, he said, and he was hired.

What he neglected to mention was that he suffered from bipolar disorder - a serious mental illness that was easily triggered by workplace stress. He also understated the number of sick days he'd taken in the previous year. (In fact, he had parted company with one previous employer when his illness got the better of him, and had filed a job discrimination complaint with the Human Rights Commission. The case was settled, on terms that weren't disclosed.) When he filled out ADGA's employment equity survey, which asked if he had a mental disability, he said no.

A couple of days after he started work, he asked his boss to monitor him for inappropriate behaviour, which he attributed to "emotional abuse" in previous jobs. Soon after that, he told her he had bipolar disorder and said he was susceptible to manic episodes that might require him to take as much as three months off work. Then he started having paranoid delusions and stopped functioning entirely.

Like all employees, Mr. Lane had been hired on 90 days' probation. On Day 8, the firm decided to cut its losses and cordially told him it was letting him go. Given the nature of its work, there was no way to reassign him.

Mr. Lane complained to the Ontario's Human Rights Commission, saying the company had failed in its duty to accommodate his mental disability. After several years of unsuccessful mediation, the case went to a tribunal hearing, which announced its verdict in December. The tribunal awarded Mr. Lane \$34,278.75 in lost wages, \$10,000 for "reckless infliction of mental anguish" and \$35,000 for "violation of his inherent right to be free from discrimination." It also ruled that the company must hire a consultant to provide all employees with human-rights training. The HRC trumpeted the verdict as a "landmark" decision for the rights of the mentally disabled.

Personally, I wouldn't wish bipolar disorder on my worst enemy. But rights slice both ways. Mr. Lane applied for a job for which he clearly wasn't suited, and misstated facts to get it. Now he stands to collect nearly \$80,000, and he was only on the job for eight days.

The amount of money awarded in cases like these is going up. "It's growing out of control," says one employment lawyer, who told me the burden on employers to show they've done everything possible to accommodate is also increasing. "It's not the extra mile any more, it's above and beyond." Many lawyers advise clients confronted with such cases to settle - it's cheaper.

Does it really matter if rights tribunals sometimes make dumb decisions? You could argue that's just the price we pay for all the good they do. The trouble is that they're more and more disconnected from common sense. They're taking on cases that would strike most of us as absurd. They're summoning journalists and magazines to defend themselves for exercising basic free speech. They're prosecuting private-sector doctors who choose not to perform elective vaginal surgery on transsexuals. They're about to hear the case against a small-time restaurant and pub

owner who told a guy to scram because his marijuana smoke was bothering the customers. The smoker says he was discriminated against because his marijuana is medicinal, and he has the right to smoke it wherever he wants to.

These bodies are fast losing their legitimacy. They have no one to blame but themselves.