

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dodd's Furniture Ltd. v. Singh et al.*,  
2023 BCSC 2030

Date: 20231013  
Docket: 21 2555  
Registry: Victoria

**In the Matter of the *Judicial Review Procedure Act*,  
R.S.B.C. 1996, c. 241**

Between:

**Dodd's Furniture Ltd.**

Petitioner

And:

**Manpreet Singh  
British Columbia Human Rights Tribunal**

Respondents

Before: The Honourable Mr. Justice Morley

On judicial review from: A decision of the British Columbia Human Rights Tribunal  
dated June 25, 2021 (*Singh v. Dodd's Furniture (No. 2)*, 21 BCHRT 85)

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Petitioner: G.S. Manhas

Counsel for Respondents: G.N. Harney

Counsel for Respondent, B.C. Human Rights Tribunal (by videoconference): J. Thackeray

Place and Date of Hearing: Victoria, B.C.  
October 11-13, 2023

Place and Date of Judgment: Victoria, B.C.  
October 13, 2023

**I. OVERVIEW**

[1] These are oral reasons at the conclusion of the hearing of the petition. They have been edited for clarity, to address errors and consistency of expression and to add citations.

[2] The respondent Manpreet Singh worked for the petitioner Dodd's Furniture Ltd. ("Dodd's") for three years until he injured his back trying to lift a sofa at the beginning of July 2017. In reasons indexed as *Singh v. Dodd's Furniture (No. 2)*, 2021 BCHRT 85 [*BCHRT Decision*], Member Prince upheld Mr. Singh's complaint that Dodd's discriminated against him on the basis of disability, contrary to s. 13 of the *Human Rights Code*, R.S.B.C. 1996, c. 210, when it did not return him to his pre-injury position after he returned from medical leave. The Member awarded Mr. Singh \$10,000 for injury to his dignity, feelings and self-respect, plus pre and post-judgment interest. She declined to award Dodd's legal costs.

[3] Dodd's now asks me to quash this decision or send it back to the Human Rights Tribunal for reconsideration. While Dodd's petition sets out a number of grounds for doing this, in the course of oral argument Mr. Manhas, on behalf of Dodd's, refined these to two:

- a) Dodd's argues that Member Prince erred by failing to dismiss the human rights complaint in its entirety as a result of what Dodd's characterizes as misrepresentations by Mr. Singh about his employment status while injured, first, to WorkSafeBC and then to the Tribunal in his complaint. Dodd's says that the doctrine of *ex turpi causa non oritur actio* ("from a wrongful cause no action arises") disentitles Mr. Singh to any remedy for discrimination based on disability under s. 13 of the *Human Rights Code*. It says that since this is a question of law, the standard of review is "correctness" under s. 59(1) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, made applicable to the Human Rights Tribunal by s. 32(q) of the *Human Rights Code*.

- b) Dodd's asks me to override Member Prince's factual finding that Dodd's offered Mr. Singh a position of "Assembly Worker" after his medical leave, different from his pre-accident position as Assistant Manager at Dodd's warehouse in Victoria. A court will only interfere with a factual finding of the Human Rights Tribunal if "there is no evidence to support it or if, in light of all the evidence, the finding is unreasonable": *Administrative Tribunals Act*, s. 59(2). However, Dodd's argues that there was no evidence to support this finding and it was therefore unreasonable.

[4] In my view, the Member made no extricable legal error in not dismissing Mr. Singh's discrimination complaint on the basis of the doctrine of *ex turpi causa* for three reasons.

[5] First, on the evidence before me, this argument was not made to the Tribunal. Mr. Manhas conceded that he did not use the term "*ex turpi causa*" in his argument before the Member, but said the essence of the argument was made. Unfortunately, closing arguments are not in the record. But the opening arguments and the reasons do not provide any indication that any argument of this kind was advanced. Even when an issue would be reviewed on a correctness basis on judicial review, it should first be made to the original decision-maker and leave is required to bring that issue up for the first time.

[6] Second, I do not think there is a plausible legal argument that the kind of conduct alleged against Mr. Singh would disentitle him to a claim for discrimination under s. 13 of the *Human Rights Code*. The doctrine of *ex turpi causa* prevents a person from *benefiting* from their own wrong. Thus, a remedy should not compensate them for what they would not be entitled to in any event. It is not a *status* bar on legal redress because someone has done something objectionable. In this case, Mr. Singh has not benefited from an overpayment by WorkSafeBC. That has already been addressed in the process under the *Workers Compensation Act*, R.S.B.C. 2019, c.1. The Member's award was for injury to his dignity, feelings and

self-respect as a result of what she found to be employment discrimination based on disability. This compensation has nothing to do with any alleged wrong by Mr. Singh.

[7] Third, the Human Rights Tribunal has various means at its disposal to protect the integrity of its process, but these are discretionary on its part and decisions it makes in this regard are only reviewable if they are “patently unreasonable”. There is no indication that the integrity of the process in this case was compromised and, indeed, the Member found it was not when she dismissed Dodd's application for costs.

[8] I also decline to interfere with the Member's factual finding that Mr. Singh was offered a position assembling furniture after his injury that differed materially from his pre-injury position as Assistant Manager at Dodd's Victoria warehouse.

[9] It is of no significance that the Member may have coined the specific phrase “Assembly Worker” as a way of summarizing the position and duties of the role Mr. Singh was offered when he was ready to return to work. The substantive point is that it was a different, and worse, job. In my view, the Member had evidence to support her findings. I cannot say that in light of all the evidence, those findings were unreasonable.

[10] I therefore dismiss the petition.

## **II THE IMPUGNED DECISION**

[11] In the Introduction to the decision, the Member sets out the background facts as follows:

- a) Mr. Singh started work for Dodd's around July 2014 as a Customer Service Representative, but within a few months was offered a position as Assistant Manager at the Victoria warehouse: *BCHRT Decision*, para. 3.
- b) Mr. Singh was in this position when he injured his back, lifting a sofa, in early July 2017: *BCHRT Decision*, para. 3.

- c) At the direction of his health care providers, Mr. Singh was off work on medical leave for five to six weeks: *BCHRT Decision*, para. 4.
- d) After Mr. Singh notified his employer that he was ready to return to work, Dodd's informed him that his Assistant Manager position was no longer available and instead he could return to work as an "Assembly Worker" at the same rate of pay and hours of work: *BCHRT Decision*, para. 4.
- e) Mr. Singh considered this position a demotion and to be more physically demanding. He refused the "Assembly Worker" position and alleged he had been discriminated against regarding his employment because of physical disability: *BCHRT Decision*, para. 4.

[12] The Member understood her job in deciding on Mr. Singh's complaint to be to find, on a balance of possibilities, whether Dodd's discriminated against Mr. Singh when it did not return him to his pre-injury position but assigned him a different job following the medical leave: *BCHRT Decision*, para. 5(a).

[13] The Member acknowledged that the parties and witnesses disagreed on some key facts, in particular about Mr. Singh's pre-injury position at Dodd's, whether it involved more physical labour than the post-injury position, and whether both positions were of equivalent stature: *BCHRT Decision*, para. 10.

[14] The Member set out her approach in addressing disagreements in the evidence at *BCHRT Decision* para. 12:

Where there was disagreement in the evidence, my findings and reasons are set out below. The Tribunal makes a finding of fact by determining which evidence, given at a hearing, is more plausible, on a balance of probabilities: *Mr. S v. Cannae Holdings*, 2018 BCHRT 47 at para. 12. Where necessary to do so, I have assessed credibility. In so doing, I have applied the principles summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398, affirmed in 2012 BCCA 296, leave to appeal refused, [2012] S.C.C.A. No. 392 at para. 186.

[15] No error in this approach has been or could be raised.

[16] In considering the conflicting evidence about Mr. Singh's pre-injury position, the Member placed weight on the offer of employment letter signed by Mr. Singh and by Gordy Dodd, the founder and a principal of Dodd's: *BCHRT Decision*, para. 13. She accepted Mr. Singh's evidence that while he engaged in occasional lifting and off-loading of delivery trucks, the position was primarily one of management, paperwork and computer work: *BCHRT Decision*, paras. 15-16.

[17] Mr. Singh was injured on July 1 or 2, 2017. He saw his chiropractor, Dr. Christopher Walker, on July 5. On July 11, he made a WorkSafe claim for lower back sprain, which was accepted by WorkSafeBC. They relied on a report by Dr. Walker, dated July 18, which said Mr. Singh could return to work in 14 to 20 days on light duties.

[18] On August 11, Mr. Singh attended the job site with a staff member from the health centre providing him physiotherapy to investigate a gradual return to work plan. There he met with April McLeod, the operations manager for Dodd's, who, the Member found, advised him his previous position as Assistant Manager was no longer available to him.

[19] The Member did not find any conflict in the evidence as to whether Dodd's was offering a new position, but analyzed whether it was part of a broader restructuring or in response to Mr. Singh's injury. In an aspect of her decision that is not challenged here, she found that the change was because of the injury.

[20] The Member found the change to what she characterized as an "Assembly Worker" position was a demotion.

[21] In legal analysis that is not challenged before me, the Member accepted that Mr. Singh's back injury was a physical disability within the meaning of the *Code*; that he had experienced an adverse impact in his employment when he was offered the new position (as the Member found it to be) and that the back injury/disability was a factor in the adverse impact he experienced. Under the tests set out by the Supreme

Court of Canada in *Moore v. British Columbia*, 2012 SCC 61 at para. 33, she held this to constitute *prima facie* discrimination in the area of employment.

[22] The Member held that Dodd's did not reasonably accommodate Mr. Singh because it could have, but did not, replace Mr. Singh *on a temporary basis* while he was on medical leave. If it had done that, he would have suffered no adverse impact, as he would have been able to do his original job duties within the constraints imposed by his back injury.

[23] The Member awarded \$10,000, plus interest in compensation for injury to Mr. Singh's dignity, feelings and self-respect. This aspect of the decision is not challenged before me.

### III FACTUAL BACKGROUND TO *EX TURPI CAUSA* ARGUMENT

[24] Some factual context is needed to understand Dodd's submission that the Member made a legal error in not applying the *ex turpi causa* doctrine. In setting this context out, I must note that I am not in a position to make primary findings of fact in a judicial review application of this nature. While Dodd's urged on me that Mr. Singh had committed "fraud", that has not been found by any court or tribunal. There is no basis for me to make such a finding here. The following factual discussion is simply to put Dodd's legal submission in context.

[25] After he was injured, Mr. Singh made a claim to WorkSafeBC for wage loss benefits for lower back sprain/strain, which were approved for the period between July 4 and September 13, 2017: *BCHRT Decision*, para. 22. His chiropractor advised WorkSafe that he was not medically capable of his pre-injury work duties as of mid-July and that he could return to work in 14 to 20 days on light duties: *BCHRT Decision*, para. 24.

[26] Mr. Singh worked part time as a cab driver before the injury. This was known to his employer, Dodd's. There is no evidence he worked as a cab driver in July 2017. However, as the Member found, he worked eight days as a cab driver in August and a day in September 2017, during the period of his wage loss benefits. In

2019, WorkSafe found that Mr. Singh did not report this income to the return-to-work specialist nurse despite being advised to do so and that this resulted in an overpayment. WorkSafe ruled that Mr. Singh owed the amount of his cab earnings to WorkSafe.

[27] WorkSafe's unchallenged decision was that Mr. Singh's failure to report the cab earnings to the return-to-work specialist nurse amounted to a misrepresentation whether "through neglect or deliberate action". As the Member noted, Mr. Singh's wage loss benefits through WorkSafe were reduced on account of his taxi earnings: *BCHRT Decision*, para. 41.

[28] The Human Rights Tribunal provides complainants a Form 1.1 for Individual Complaint. Under the heading "Step 6 Remedies", the form asks a complainant to list the type of remedies they want. In his original complaint, Mr. Singh stated, "I would like compensation for lost wages during my time of unemployment. I was unemployed from September 2017 until November 2017."

[29] Dodd's was aware that Mr. Singh worked part time as a taxi driver while he worked with them. In the course of the complaint, it asked Mr. Singh for taxi records and complained that it did not receive them sufficiently or in a timely manner: *BCHRT Decision*, para. 70. Mr. Singh abandoned his wage loss claim before the hearing of his complaint.

[30] Dodd's asked the Member to exercise her authority under s. 37(4) of the *Human Rights Code* to award costs against a party to a complaint who has engaged in improper conduct during the course of the complaint apparently on the basis of the claim of unemployment and on the basis of failure to disclose the taxi records sufficiently or in a timely manner.

[31] In an aspect of the decision that is unchallenged, the Member ruled as follows, at *BCHRT Decision* paras. 71 and 72:

I do not find circumstances in this case to warrant an award of costs for several reasons. First, I do not find that Mr. Singh attempted to mislead the



Tribunal. He was able to explain any errors or discrepancies in documents filed with the Tribunal and produced for the hearing. Second, he was entitled to amend his Tribunal forms (within the time limits to do so) based on new information and legal advice available. Third, I am satisfied that Mr. Singh, with the assistance of various law students, including Ms. Norton, was diligent and reasonable in responding to Dodd's request for taxi records. Finally, none of Mr. Singh's conduct during the course of the complaint led to a significant prejudicial impact on Dodd's, or otherwise had a significant impact on the integrity of the Tribunal process. It is these types of impacts that the Tribunal seeks to deter when making a cost order: *Shiozaki v. Aboriginal Mother Centre Society and another*, 2020 BCHRT 10 at para. 65; *Thorgeirson v. Sidney Bakery and another*, 2019 BCHRT 246 at para. 56.

Dodd's had access to all of Mr. Singh's updated documents filed at the Tribunal, in advance of the hearing. It had the opportunity to cross-examine Mr. Singh on any errors or discrepancies in any of his documents. Dodd's also had access to Mr. Singh's taxi records in advance of the hearing: .... There is no evidence that Dodd's was prejudiced related to Mr. Singh's conduct in his complaint, nor any evidence that Mr. Singh's conduct interfered with the integrity of the Tribunal process. ...

[32] While the wage loss claim was abandoned, I have no evidence about its merits. In particular, I have no evidence as to whether Mr. Singh's taxi earnings that he was able to have as a result of leaving his job were equal to or greater than what he earned at Dodd's. The Member found as a fact that Mr. Singh suffered "financial" hardship as a result of losing his job, although she did not award any compensation on this score as a result of Mr. Singh's abandonment of this aspect of the relief sought: *BCHRT Decision*, para. 68.

[33] As a general matter, it cannot be inferred from the fact that a person abandons a legal claim that it was completely without factual foundation. Mr. Singh overstated matters when he said he was "unemployed" after he left Dodd's since he did have some earnings as a cab driver.

#### **IV ALLEGED LEGAL ERROR: FAILURE TO APPLY *EX TURPI CAUSA* DOCTRINE**

[34] At paragraph 6 of the "Legal Basis" of the petition, Dodd's states as follows:

The Tribunal erred when it failed to consider the self-admitted misrepresentations perpetrated by Mr. Singh regarding his employment. Mr. Singh claimed to be physically disabled between July 1[st], 2017 and September 14[th], 2017 but worked in employment as a taxi cab driver. The

Complainant claimed physical disability benefits from WorkSafe BC paid partially through premiums by the Respondent. Mr. Singh was forced to return physical disability benefits as a result of his actions. The Tribunal breached natural justice and procedural fairness by failing to grapple with or address key submissions and issues raised by the Petitioner.

[35] In oral argument, Mr. Manhas clarified that he was *not* alleging that the Member breached natural justice or procedural fairness. He also clarified that he was not challenging her consideration of the evidence that Mr. Singh had shifts as a taxi driver in August and September 2021 in her analysis of whether he was disabled within the meaning of the *Human Rights Code* at the relevant time: *BCHRT Decision*, paras. 42 and 51.

[36] As clarified by Mr. Manhas, this ground for review appears to be that the Member erred in law because she did not dismiss the complaint in its entirety as a result of what Mr. Manhas characterized as “fraud”.

[37] While the default standard of review for administrative tribunals engaging in statutory construction of their home statute is “reasonableness”, the standard of review for errors of law by the Human Rights Tribunal is “correctness” since the legislature has set this standard: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 33-35.

[38] Even when a question is one that can be reviewed on a standard of correctness, a party should still raise it before the tribunal at first instance and not first to the court on judicial review: *Prokam Enterprises Ltd. v. British Columbia Farm Industry Review Board*, 2023 BCSC 403 at paras. 70-74. There is a discretion in the court to hear an argument for the first time, which perhaps will be exercised more when the question is one on which correctness applies. However, the applicant for a judicial review must establish it is in the interests of justice to do so, having regard to:

- a) respecting the legislator's choice of the tribunal as the first instance decision-maker by giving the tribunal the opportunity to deal with the issue and make its views known;

- b) avoiding prejudice to the responding party; and
- c) ensuring that the reviewing court has an adequate evidentiary record to consider the issue and the benefit of the tribunal's views on the issue.

[39] See *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paras. 22-26.

[40] In this case, it is disputed whether the *ex turpi causa* argument was made to the Tribunal. I do not have the benefit of the closing submissions of the parties, although a transcript could have been ordered. Mr. Manhas concedes that he never used the words “*ex turpi causa*” in his submissions to the Tribunal, but says that it was clear from the whole tenor of the case that Dodd's was arguing that relief should be denied in light of Mr. Singh's conduct.

[41] However, no such argument is apparent from the opening argument, of which I do have a transcript. Further, the Member seems to have understood the relevance of any taxi driving by Mr. Singh during August or September as being an attempt to show that he was not, in fact, disabled at the time. She clearly considered this and analysed this issue in detail. She also considered the alleged misleading of the Tribunal and the integrity of its process in relation to Dodd's application for costs.

[42] In my view, the onus is on the petitioner to establish it made an argument before the statutory decision-maker and it has failed to do so here.

[43] I am reluctant to exercise discretion to hear this argument for the first time. The Tribunal is best placed to hear at first instance whether misconduct of the type alleged would disentitle a person alleging discrimination to relief. Mr. Singh is potentially prejudiced since his counsel has only heard that “*ex turpi causa*” was to be argued at the beginning of this hearing. I do not have the benefit of findings of fact by the Member directly on point.

[44] To the extent there are findings of fact by the Member, they do not assist Dodd's. She found that in relation to his filings and the taxi records, Mr. Singh made no attempt to mislead her and was able to explain errors or discrepancies. She found no prejudice to Dodd's and no interference with the integrity of the tribunal process.

[45] However, because there is some doubt, I will cautiously exercise my discretion to consider the argument that the *ex turpi causa* doctrine prevented the complaint from being heard on its merits. Any argument that the Tribunal had *discretion* in this respect definitely should not be made for the first time here and I decline to consider such an argument.

[46] The only issues I will consider is whether it was an error of *law* for the Member not to dismiss the complaint outright on the grounds of *ex turpi causa* on the basis of the findings by WorkSafe about Mr. Singh's conduct or on the basis that he said he was "unemployed" in his complaint. This is to be distinguished from whether she had the *discretion* to dismiss on either of these bases, which I am not prepared to consider for the first time.

[47] I dismiss the argument that the *ex turpi causa* doctrine, as a matter of law, prevented the complaint from being heard on its merits.

[48] The doctrine of *ex turpi causa* does not deprive a person of their ability to bring a discrimination complaint even if they have engaged in serious criminal conduct, let alone for the "neglect" that was found by WorkSafe here. As s. 13 itself makes clear, people continue to have protection from discrimination even if they have violated the law.

[49] Rather, *ex turpi causa* prevents a person from *benefiting* from "illegal or immoral conduct": *Randhawa v. 420413 B.C. Ltd.*, at para. 66. In other words, it applies when the remedies sought would itself lead to a benefit that could only accrue because of wrongful acts.

[50] Understood in this way, the doctrine cannot have any application in this case.

[51] Mr. Singh has already been required to pay back the money he earned as a taxi driver during the period he was on WorkSafe benefits. He has *not* benefited from that work.

[52] The Member's award compensated him for something completely different, namely, the injury to his dignity, feelings and self-respect as a result of an adverse employment consequence she found that constituted discrimination contrary to s. 13. Compensation for that injury is not compensation for unlawful or wrongful acts.

[53] I would, therefore, reject any argument that the Member *had* to dismiss the complaint based on what WorkSafe found to be a misrepresentation - possibly by neglect - of his income during the time he was on leave as a result of his injury or based on his statement that he was “unemployed afterwards” in his original complaint. Even assuming these were “wrongs”, nothing about the reward resulted in his benefiting from them. There can be no status prohibition on a person alleging and proving discrimination based on other acts or omissions that he may have done wrong.

[54] I am not prepared to consider an argument that the Tribunal had discretion to dismiss the claim which it should have exercised in Dodd's favour. The Tribunal has authority to dismiss complaints for a number of reasons, as set out in s. 27 of the *Human Rights Code*. Its exercise of this authority is reviewed on the “patent unreasonableness” standard set out in s. 59(4) of the *Administrative Tribunals Act*. See *Lungu v. British Columbia (Ministry of Children and Families Development)*, (unreported) Vancouver Registry, 20 February 2014. To the extent Dodd's is arguing that there may be additional or unenumerated grounds for the Member to have dismissed the complaint based on the alleged conduct of Mr. Singh, I have no basis to conclude that it made any such application and I decline to consider the issue for the first time on judicial review.

**V. FINDING THAT MR. SINGH WAS OFFERED A POSITION THAT COULD BE CHARACTERIZED AS “ASSEMBLY WORKER”**

[55] The other remaining basis for judicial review in the petition is as set out in paragraph 3 of the Legal Basis:

The Tribunal erred when it created the position of "Assembly Worker" when there were no facts or evidence presented for the creation of this Tribunal defined and Tribunal created position. The Complainant himself variously described himself as a "Manager", Assistant Manager, "manager in warehouse operations" and "Receiving and Shipping Supervisor." There were no reasonable grounds to conclude that his variously described designation had changed.

[56] Mr. Manhas confirmed that Dodd's is asking me to set aside a finding of fact of the Member under this ground of review and acknowledged that I can only do so if “there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable”.

[57] When considering whether a tribunal erred in making a finding of fact, the court must avoid reweighing the evidence and maintain an attitude of deference to the tribunal's fact-finding role: *Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33 at para. 29.

[58] In the course of Mr. Manhas' oral argument on behalf of Dodd's, I repeatedly invited him to identify with precision what findings of fact in the *BCHRT Decision* he was asking me to set aside, but he declined to do so. This is unfortunate. Since this is clearly an area in which the “reasonableness” standard of review applies, a principled approach must put those reasons first: *Vavilov* at para. 84.

[59] I must proceed with respectful attention to the reasons given by the Member. I am only to interfere if there is either a failure in internally coherent reasoning or an “exceptional circumstance” which justifies interference with factual findings: *Vavilov* at para. 125. Examples of the latter, in addition to complete absence of evidence, would include a fundamental misapprehension of the evidence, a failure to account for evidence and reliance on irrelevant stereotypes: *Vavilov* at para. 126.

[60] My first comment is that the *BCHRT Decision* is not only internally coherent, it is exceptionally well reasoned and logically set out. The Member justifies her conclusions with specific references to the evidence that are in turn justified when I reviewed the transcript and documentary evidence provided to the Tribunal.

[61] In the petition it is said that there were no reasonable grounds to conclude that Mr. Singh's job changed between the time he was injured and after he indicated he was ready to return. Both in the Legal Basis and in Mr. Manhas' oral argument, much is made of different ways that Mr. Singh characterized his job. But the member specifically relied on a November 1, 2014 offer letter signed by Gordy Dodd, CEO of Dodd's, and by Mr. Singh which states:

We are now in a position to offer you the full-time permanent position of Assistant Manager at Dodd's Furniture warehouse located at 650 Garbally Street, Victoria, B.C.

[62] This letter sets out duties, all of which are supervisory and managerial and none of which involve assembling furniture or other manual labour.

[63] In the petition it is claimed that the position of "Assembly Worker" was created by the Tribunal itself. Reading the *BCHRT Decision* with the appropriate respectful attitude of deference, however, I would decline to interpret the Member's use of the phrase "Assembly Worker" as a finding that Dodd's itself created a specific job title with that name. Interpreted appropriately, the finding was that Mr. Singh was only offered a position whose primary role would be assembling furniture and which would not have any of the managerial and other responsibilities associated with his pre-injury position. This finding is borne out by evidence from a number of witnesses, including those called by Dodd's itself. It is also confirmed by documentary evidence.

[64] The documentary evidence is an email from Love Dodd, dated August 24, 2018, in which he stated, "You were injured and as such *we created a new position at the same rate of pay and with the same hours.*" The fact that this was a new position is confirmed further by the requirement that Mr. Singh attend "training".

[65] The nature of the “new position” is set out in oral evidence by a number of witnesses.

[66] Mr. Singh testified that when he visited the warehouse with the kinesiologist, (which, as is revealed from other evidence, occurred on August 11), he was told by April McLeod, Dodd's Operation Manager, that she had given his position to someone else and that he would have to do “furniture assembly” and “offloading the truck”: Transcript of Evidence April 6, 2021, at pp. 11, 28-29, 42. Mr. Singh repeated this characterization in cross-examination and was not challenged on it: Transcript of Evidence April 6, 2021, p. 80.

[67] Ms. McLeod testified that she did not believe she had to offer Mr. Singh the same job as when he came back from his medical leave and characterized the post-injury job as "assembling furniture". On cross-examination she confirmed that she had hired someone else for his pre-injury job position and that her understanding was that she could offer him a different position so long as the wage and hours were the same.

[68] Love Dodd also confirmed that the job Mr. Singh would have after he returned would be assembling furniture “all day” with power tools and called this “position” “assembly” or “assembling furniture”. Similar evidence was provided by Sameer Sanam, who had been Mr. Singh's immediate supervisor.

[69] In short, there was abundant evidence from which the Member could find that Mr. Singh was being demoted in what she referred to, quite reasonably, as the "Assembly Worker position". It would be pedantic to put any weight on the fact that this precise phrase was not used by the witnesses when they referred to the position as “the assembly” or “assembling furniture”. It is no error for an adjudicator to use an apt phrase of her own construction to make her reasons more understandable.

## **VI. CONCLUSION**

[70] The legislature has entrusted the Human Rights Tribunal, not the courts, with the job of adjudicating complaints of discrimination under the *Human Rights Code*.



Like all bodies entrusted with such statutory roles, the Human Rights Tribunal is subject to legal limits. The role of the court on judicial review of an administrative tribunal is not to rehear the case, but to ensure the legality, reasonableness, and fairness of the administrative process and its outcomes. It does this by reviewing, with appropriate deference, the reasons the tribunal gives in light of the appropriate standard of review, which in the case of the Human Rights Tribunal is that set out by s. 59 of the *Administrative Tribunals Act*.

[71] The petitioner Dodd's asks me to review what it says is an error of law. That supposed error of law was that the Tribunal did not, based on the doctrine of *ex turpi causa*, refuse to consider Mr. Singh's complaint of discrimination in employment because he neglected to inform WorkSafeBC of earnings as a part-time cab driver while on wage replacement benefits and stated that he was unemployed subsequent to his departure from Dodd's on his complaint form, although he did some work as a cab driver at that time.

[72] I do not have any basis to conclude that Dodd's made this argument -- or even a substantially similar one -- to the Tribunal and would decline to exercise my discretion to allow this argument to be made at first instance on judicial review, at least so far as it is said to be a discretionary decision on the part of the Tribunal. In any event, the doctrine of *ex turpi causa* only prohibits a claimant from benefitting from their own wrong, and I cannot see how a compensatory award for injury to dignity, self-respect and feelings as a result of what was found to be employment discrimination based on disability would do this, especially since Mr. Singh has already been required to reimburse WorkSafe for any overpayment.

[73] Dodd's also asked me to set aside findings of fact the Member made about the differences between Mr. Singh's pre-injury and post-injury position and job duties based on the standard of review set out by s. 59(2) of the *Administrative Tribunals Act*. However, I find nothing unreasonable in the Member's finding in this regard and, in fact, she had abundant evidence on which to make her findings.

[74] I, therefore, dismiss the petition.

**COSTS**

[75] I award no costs for or against the Human Rights Tribunal for its participation.

[76] I turn to costs between Dodd's and Mr. Singh. The ordinary rule is that the successful party in the cause is entitled to costs. There is no argument to depart from that rule here.

[77] The only other issue is the costs of the preliminary hearing to strike the petition that was not heard. Mr. Manhas asks that I award those costs to Dodd's. I see no reason to accept that argument, but I agree that Mr. Singh should not get those costs.

[78] I order that Dodd's Furniture Ltd. pay Mr. Singh his costs of this proceeding with the exception of the costs of the application under 9-5. Costs of the petition are assessed as party and party costs at Scale B.

“The Honourable Justice Morley”