

LABOUR & EMPLOYMENT LAW

NEWFOUNDLAND AND LABRADOR *HUMAN RIGHTS ACT, 2010*

The government of Newfoundland and Labrador has recently passed the *Human Rights Act, 2010*, replacing the former *Human Rights Code*, and providing a much needed update to many of the protections and procedures in the province's human rights legislation.

The new *Act* provides a wider range of protection from discrimination and harassment, defines important concepts in more modern and respectful language, and improves the efficiency of the Human Rights Commission complaint and adjudication process.

EXPANSION OF THE PROTECTION AGAINST DISCRIMINATION

The *Human Rights Act, 2010* has expanded the protection against discrimination in employment in several ways. First, it has enlarged the list of grounds upon which discrimination is prohibited. Previously, discrimination was prohibited on the basis of race, colour, nationality, ethnic origin, religious creed, religion, age, physical disability, mental disability, sex, sexual orientation, marital status, family status, and political opinion. The new legislation adds "disfigurement" as well as "source of income" to the list of protected grounds. Second, the new *Act* expressly prohibits discrimination on the basis of criminal conviction "for an offence that is unrelated to the employment of the person." Third, it now protects people who receive social assistance from being denied or discriminated against in employment. Fourth, the *Act* now features express language to protect women from discrimination in employment on the basis that they are or may become pregnant.

In addition to the many protections from discrimination in employment, the *Human Rights Act, 2010* also protects individuals against discrimination in many other aspects of society: a person may not be denied goods, services, accommodation or facilities that are customarily offered to the public, on the basis of any of the prohibited grounds of discrimination. Likewise, housing may not be denied on the basis of any of the prohibited grounds, or otherwise provided on terms that discriminate against a person. The *Act* also prohibits publishing or displaying anything that is discriminatory contrary to the *Act* (although free expression is recognized and affirmed), and prohibits discrimination when making contracts (although insurance contracts and some others are generally exempted from this requirement).

DEFINITIONS UPDATED AND BROADENED

The new legislation has revised the definitions of physical and mental disability by pulling them under the umbrella term "disability", removing some outdated language (e.g. "mental retardation"), and generally cleaning up the meaning of the term. "Disability" now includes physical disability, mental

impairment or developmental disability, learning disability, and mental disorder. Protection on the basis of disability has been broadened to include not only diagnosis of a disability, but even the belief that a person may have a disability or predisposition to a disability, regardless of whether or not that belief is accurate or reasonable.

Marital status has been defined in the new legislation to mean the status of being single, engaged, married, separated, divorced, widowed or two people living the same household as though they were married (commonly referred to as “common law” marriage). Given the protection of sexual orientation in the *Act*, same-sex couples would enjoy the same status titles as heterosexual couples. Family status is expanded to include the step child/parent relationship.

AGE RESTRICTION ELIMINATED

Under the *Human Rights Code*, an employer could have refused to hire a person, or hired them upon different terms, if that person had not yet reached the age of 19 years. However, under the *Human Rights Act, 2010*, the age restriction has been removed, and employers are not permitted to deny employment simply because the applicant is less than 19 years old.¹ Furthermore, the *Act* has eliminated the age restriction for filing a complaint, so that now a person of any age is entitled to file a complaint.

COMPLAINT PROCESS MORE EFFICIENT

The *Human Rights Act, 2010* grants greater discretionary power to the Executive Director of the Human Rights Commission. This includes the ability to dismiss complaints which are clearly frivolous and those that do not fall within the jurisdiction of human rights legislation. It also contains provisions to permit a more expedited process for the evaluation and treatment of complaints by Commission. For example, the *Act* allows for regulations to establish timelines for filing documentation related to the complaints process. The new procedures and powers appear to be aimed at remedying the delays in the complaints process, which have historically plagued the Human Rights Commission and those with matters before it.

The new *Act* also introduces a merit-based appointment process for commissions and adjudicators which will ensure that the Commission is composed of members who collectively possess experience in human rights issues and an interest in and sensitivity to human rights.

SUMMARY

Overall, the *Human Rights Act, 2010* provides some welcomed and comprehensive changes to the human rights law in the province. For employers the changes should mean more precision, clarity, and predictability in the law, as well as a more efficient process before the Commission.

¹ It should be noted that discrimination, whether based on age or any other prohibited ground, is not prohibited where it arises from the expression of a limitation, specification or preference in employment which is based on a good faith occupational qualification. It would likely be a good faith occupational requirement for a bartender in a night club to have reached the legal age for alcohol consumption, being 19 years. Thus, it would not be discriminatory to deny an 18-year old such a position on the basis of age.

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