
CANADIAN MENTAL HEALTH ASSOCIATION (CMHA) - PEEL

Brampton – February 15, 2008

Anti-Harassment & Anti-Discrimination

By U. Shen Goh, LL.B., LL.M.

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PART I - FREEDOM FROM DISCRIMINATION

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

2

5. (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.

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7. (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

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10. (1) “harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

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PART II – LIMITED EXCEPTIONS (SOME EXAMPLES)

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

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15. A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment.

7

16. (1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law.

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17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

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18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

10

19. (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*.

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20. (1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency.

12

20. (2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the *Liquor Licence Act* and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years.

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20. (3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status.

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20. (4) The right under section 1 to equal treatment with respect to goods without discrimination because of age is not infringed by the provisions of the *Smoke-Free Ontario Act* and the regulations under it relating to selling or supplying tobacco to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be.

15

21. (1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner.

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22. The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of age, sex, marital status, family status or disability.

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24. (1)(a) The right under section 5 to equal treatment WITH RESPECT TO EMPLOYMENT is not infringed where a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment;

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• **24 (1)(b)** The right under section 5 to equal treatment **WITH RESPECT TO EMPLOYMENT** is not infringed where the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and bona fide qualification because of the nature of the employment;

19

24.(1)(c) The right under section 5 to equal treatment **WITH RESPECT TO EMPLOYMENT** is not infringed where an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;

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PART III – DUTY TO ACCOMMODATE (ONLY FOR AGE, SEX, RECORD OF OFFENCES OR MARITAL STATUS)

24. (2) The Commission, the Tribunal or a court shall not find that a qualification under clause 24(1) (b) is reasonable and *bona fide* unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

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EMPLOYEE'S DUTY

Employees have a duty to disclose their disability and co-operate with their employers in accommodating the disability. It is the responsibility of employees with disabilities to:

- Inform their employers of their need (ask for it in writing!)
- Co-operate in obtaining necessary information (medical and expert opinions)
- Work with the employer to find solutions/accommodations

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EMPLOYER'S DUTY

Employers have a duty to accommodate up to the point of undue hardship. Employers are required to:

- Respond to the employee in a timely manner (do it in writing!)
- Request information only if it is necessary (and bear the costs)
- Find solutions/accommodations actively (and maintain confidentiality)

23

FACTORS

Only three factors can be considered in assessing undue hardship:

- Cost
- Outside sources of funding
- Health and safety

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PART IV – RECOMMENDATIONS TO REDUCE POTENTIAL LIABILITY

The concepts of human rights, anti- harassment and anti-discrimination, as well as accommodation and undue hardship, are complicated. Employers can reduce potential liability by taking the following steps:

- Reduce mistakes by pre-establishing employment ad guidelines, application forms and interview questions.

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- Deter human rights violations by having a clear procedure for reports and complaints, investigation and resolution.
- Lessen the likelihood of harassment by providing training materials and workshops to employees.
- Discourage allegations of discrimination by pre-establishing accommodation policies and undue hardship criteria.

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