
**THE 2010 ANNUAL
CHURCH & CHARITY LAW™ SEMINAR**

Toronto – November 18, 2010

**Perspectives on the Christian Horizons
Decision: Maintaining Religious Identity**

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A. INTRODUCTION

- In May 2010, the Ontario Divisional Court in an appeal from a Human Rights Tribunal ruled that Christian Horizons could not, as a qualification for employment, prohibit a support worker from being involved in a same-sex relationship
- The decision did, however, make significant findings about the nature of religion and freedom of religion

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B. FACTS

- Christian Horizons was founded in 1965 as an Evangelical Christian organization to minister to individuals with developmental disabilities
- It is the largest single community living service provider in Ontario and receives about \$75 million annually in public funding
- Christian Horizons serves everyone, irrespective of faith, but required all staff to subscribe to a doctrinal statement and a Lifestyle Statement

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- The Lifestyle Statement prohibited conduct “incompatible with effective Christian counseling ideals, standards and values” including extra-marital relationships, same-sex relationships, theft, fraud, lying and deceit
- A “support worker”, Connie Heintz, who had signed the Lifestyle Statement, entered a same-sex relationship and was disciplined. She resigned alleging that she had been discriminated against

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C. LEGISLATION – ONT. HUMAN RIGHTS CODE

- 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, same-sex partnership status, family status or disability
- 24(1) The right under section 5 to equal treatment with respect to employment is not infringed where:

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(a) A religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of person 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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D. REQUIREMENTS OF STATUTORY EXEMPTION – SECTION 24 (1) FOR RELIGIOUS ORGANIZATIONS

- Must be a religious organization
- Must be primarily engaged in serving interests of people identified by their creed and give preference in employment to people similarly identified
- The employment preference must be a reasonable and *bona fide* qualification because of the nature of the employment (“the BFOQ ”)

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E. RELIGIOUS ORGANIZATION

- The Divisional Court agreed with the Human Rights Tribunal that Christian Horizons is a religious organization because of the following indicia
 - Members of Christian Horizons have always been Christians who wished to join a Christian organization
 - Its doctrinal statement is a core document that is part of its Constitution and By-laws

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- Religious observances and practices “permeate all formal activities of the organization”, including Directors meetings and dedication services for new programs
- Neither public funding nor the fact that Christian Horizons provided a social service affected the finding that it is a religious organization

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F. SERVING CO-RELIGIONISTS

- The Human Rights Tribunal held that on a “plain reading” of the legislation Christian Horizons was not primarily serving people identified by their creed (Evangelical Christians) but rather serving everyone irrespective of creed

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- The Divisional Court held that the correct approach is to determine if the organization sees the activity as a religious activity and whether the activity furthers the religious purposes of the organization and its members, “thus serving the interests of the members of the religious organization”
- The decision recognizes that religious organizations serve the interests of their members whenever they undertake activities that further their religious purposes

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- The Court held that the purpose of the preferential hiring provisions is to protect the fundamental freedom of association of individuals to join groups for particular purposes, including religious purposes

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- The Divisional Court also held that the narrow interpretation of the Human Rights Tribunal would restrict the freedom of religion of members of Christian Horizons because it “would require them to confine their charitable work to members of their faith group, when they see their religious mandate as to serve all the needy without discrimination”

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G. *BONA FIDE* OCCUPATIONAL QUALIFICATION

- The BFOQ has a subjective and objective test
- The subjective element requires that the qualification be imposed in good faith, honestly and in the sincere belief that it is necessary for performance of the job and not for any ulterior reason

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- Christian Horizons had no problem in satisfying the subjective test
- The objective test requires a close examination of the employee's duties, functions and activities
- "The qualification to be valid must not just flow automatically from the religious ethos of Christian Horizons. It has to be tied directly and clearly to the execution of and performance of the task or job in question"

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- The Court concluded that the requirement that a support worker refrain from same-sex relationships was not a BFOQ because
 - The support worker was not engaged in "religious education or indoctrination" or in "promoting an evangelical way of life"
 - There was nothing about the performance of tasks such as cleaning, laundry, or helping residents to eat, that would require a support worker to refrain from same-sex relationships

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- The Court was not persuaded by the position of Christian Horizons that the support workers were the “face of the organization”, that religious commitment is essential to the work and that it is difficult to separate out the religious component from specific tasks

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H. POISONED WORK ENVIRONMENT

- The Human Rights Tribunal found that Christian Horizons created a poisoned work environment once Ms. Heintz's same-sex relationship became known by suggesting Christian counseling and permitting rumours and innuendos. This violation of the Code is not subject to the statutory exemption
- The Divisional Court did not interfere with this finding which is fact specific

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I. THE WAY FORWARD

- The Court's decision affirms an important principle that religious organizations, whether they provide services directly to their own adherents or to the public, are eligible for the statutory exemption in the Ontario *Human Rights Code* that allows them to hire co-religionists

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- The decision respects the historic involvement of religious organizations in social ministry with people of all faiths, particularly those who are disadvantaged
- The Court's confirmation that the statutory exemption is not to be read restrictively but as creating and protecting the rights of groups to associate and share like-minded views protects and promotes freedom of religion

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- The rulings of the Court on the BFOQ and the poisoned work environment are problematic
- A BFOQ is, however, fact specific. Facts that worked against Christian Horizons are that there was no evidence that the leadership of the organization did a close examination of the nature and essential duties of its support worker, or why adherence to a lifestyle statement was a necessary qualification

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- Another complicating factor was that, with the exception of supervisors, all employees were called support workers with the same job description, title and function
- It would, therefore, be prudent for religious organizations that wish to use Lifestyle Statements that contain discriminatory qualifications to review them and tie them directly to their doctrinal statement and to the performance of an employee's position

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- Job titles and descriptions are also important; they should be assessed to determine which positions can be directly connected to certain qualifications
- It is important that leadership turn its mind and document its efforts to conducting an appropriate examination of the nature and essential duties of the employee's position when imposing restrictions

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- The Christian Horizons decision only affects employees and possibly volunteers. It does not affect requirements of members or directors to sign Lifestyle Statements
- While the Court provided little guidance as to what is a "poisoned work environment" drafting Lifestyle Statements in positive language and responding to employees who contravene the statements with sensitivity and respect will go a long way to avoiding creating a "poisoned work environment"


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J. CONCLUSION

- The results of the Christian Horizons case are mixed
- However, with careful planning, documentation and implementation, religious organizations should still be able to have Lifestyle Statements that may on their face contravene the *Human Rights Code*

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