Discrimination – 2023 Year in Review



FEDERAL

LAWS & ANNOUNCEMENTS

Apr 20: Canadian corporate board rooms are making glacially slow progress toward achieving diversity goals, according to a newly published report finding that numbers of diverse board members rose slightly, the overall percentage of corporate board seats filled by women and visible minorities actually decreased in 2022.
Action Item: The 8 things you must know to comply with the new federal pay equity law

Jul 4: *Newly effective Public Service Employment Act* amendments require covered departments and agencies to evaluate their interview, written exam and other hiring process assessment methods for potential biases against people belonging to equity-seeking groups, and to take steps to remove or minimize the biases they identify.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Nov 29: Newly tabled Bill S-257 would amend the Canadian Human Rights Act to make political belief and activity a prohibited grounds of discrimination.

CASES

Discrimination: "Normal Pensionable Age" Retirement Rules Don't Violate Charter
The *Canadian Human Rights Regulations* allow disability plans to exclude persons ages 65 or older who are of "normal pensionable age" without committing age discrimination. For years, the union representing Air Canada pilots has been in litigation seeking to get the federal courts to declare those provisions unconstitutional. The latest attempt has ended the way the others have, with the Federal Court upholding dismissal of the union's case. The "normal pensionable age" exemptions don't violate Charter protections against age discrimination, the Court affirmed [*Air Canada Pilots Association v. Air Canada*, 2023 FC 138 (CanLII), January 30, 2023].
Action Point: Find out more about mandatory retirement and age discrimination rules

BRITISH COLUMBIA

LAWS & ANNOUNCEMENTS

Mar 7: The new pay transparency legislation, Bill 13, doesn't go far enough in eliminating pay disparity between men and women, says the BC Human Rights Commissioner, citing the bill's lack of "accountability mechanisms." At 17%, the

province has one of the highest genders pay gaps in Canada and doesn't have a pay equity law, the Commissioner adds.

Mar 7: "We lost our collective innocence during the pandemic." So begins the new 482-page report from the BC Human Rights Commission documenting the increase in hate crimes and incidents that took place in the province during the pandemic.

Jun 5: From now through Sept. 30, BC will hold online surveying on what the government should do to address systemic racism. The government will use the feedback to identify and create new legislation to deal with the gaps and barriers faced by Indigenous and racialized people in the province.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Sep 30: That's the deadline to participate in online surveying on what BC should do to address systemic racism. The government will use the feedback to identify and create new legislation to deal with the gaps and barriers faced by Indigenous and racialized people in the province.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Sep 30: Online surveying on what BC should do to address systemic racism is coming to an end. The government will use the feedback to identify and create new legislation to deal with the gaps and barriers faced by Indigenous and racialized people in the province.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

CASES

Discrimination: Family Status Accommodation Required Even If Employment Terms Don't Change
Working the same shift at the same mine with her journeyman electrician husband was no problem for a journeyman welder until the couple had their first child. When negotiations over a revised work schedule failed, the welder sued the employer for family status discrimination and failure to make reasonable accommodations. We don't have to make reasonable accommodations, the employer responded, because we just want to continue the status quo and have made any actual changes to the terms of the welder's employment. The BC Human Rights Commission allowed the lawsuit and the employer appealed all the way to the Court of Appeal. **Result:** The welder had a valid claim for discrimination. The employer's duty to make reasonable accommodations applies to **any** term of employment that interferes with a parental duty, even if that term hasn't changed. But while employees need not prove that their employment terms have changed to be entitled to family status accommodations, the high court continued, they do have to show that the term of employment "seriously" interferes with a "substantial" parental or family duty [*British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd*., 2023 BCCA 168 (CanLII), April 21, 2023].
Action Point: Find out how far employers must go to accommodate the scheduling needs of working parents

Discrimination: Real Estate Agent Can Go Forward with Sexual Orientation Discrimination Claim
A gay senior real estate agent worked hard to keep his sexual orientation and personal life separate, wanting to be judged only by his work ethic and professional accomplishments. The new VP, also gay, allegedly didn't respect this attitude and continually badgered the agent with inappropriate sexual remarks. He also caught flak from another regional director appointed by the VP who, while pronouncing her "love

for gay people" and many "gay friends" exhibited an exuberance that made the agent feel uncomfortable. Before getting to the merits, the BC Human Rights Tribunal had to decide whether the agent filed the case on March 15, 2022, had met required 1-year filing deadline. Yes, the Tribunal ruled, but just barely, noting that the last alleged act of discrimination occurred during the exit interview the company held with the agent on March 17, 2021, a narrow margin of 2 days [*The Worker v. The Company and others*, 2023 BCHRT 85 (CanLII), July 19, 2023].
Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace

NEW BRUNSWICK

LAWS & ANNOUNCEMENTS

Jan 6: The New Brunswick Human Rights Commissioned published new guidelines on avoiding ageism and age discrimination in the workplace. Recommendations: Don't include or hint at age limits in job ads, evaluate performance rather than work fitness and give older workers at risk of losing their jobs retraining and phased retirement options.
Action Point: Implement a legally sound age discrimination policy at your workplace

Apr 3: The New Brunswick Human Rights Commission issued a statement decrying the recent acts of violence against and reaffirming the rights of members of the LGBTQ2S community.
Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace

NOVA SCOTIA

LAWS & ANNOUNCEMENTS

Jan 27: That's the deadline to participate in an online survey asking minorities, members of the LGBTQ community and other marginalized groups about whether they've experienced discrimination in accessing or receiving healthcare services in the province.
Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace

Jul 6: Nova Scotia unveiled its new Equity and Anti-Racism Strategy setting out a long-term plan of government action designed to eliminate systematic racism and hate across the province.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

CASES

Discrimination: Nova Scotia Human Rights Commission Can Rule on Labour Disputes
Some courts have ruled that human rights tribunals don't have jurisdiction over discrimination claims involving union members that are subject to dispute resolution under a collective agreement. The Nova Scotia Court of Appeal has now rejected that theory in a case involving a Halifax police officer who claimed the department discriminated against her on the basis of her post traumatic stress disorder (PTSD). Distinguishing the case from a leading rule from Manitoba, the high court found that the Nova Scotia *Human Rights Act* didn't display a clear intent to give the labour arbitrator sole jurisdiction for resolving collective agreement disputes involving discrimination the way its Manitoba counterpart did. **Result:** The labour arbitrator and human rights commission could both exercise jurisdiction over the case [*Nova*

Scotia (Human Rights Commission) v. Nova Scotia (Attorney General), 2023 NSCA 66 (CanLII), September 20, 2023].

NORTHWEST TERRITORIES

LAWS & ANNOUNCEMENTS

Mar 30: The GNWT tabled a new plan designed to achieve diversity and inclusion in the public service workforce. Initiatives include Affirmative Action, Harassment Free and Respectful Workplace and Duty to Accommodate Injury and Disability policies.
Action Point: Implement an effective diversity and inclusion policy at your workplace

NUNAVUT

LAWS & ANNOUNCEMENTS

May 11: The GN says it will continue to develop and implement ambitious plans to increase Inuit employment in government at levels commensurate with their percentage of the territory's population. The announcement comes in response to an arbitrator's ruling on lack of Inuit representation in government employment.

ONTARIO

LAWS & ANNOUNCEMENTS

Jan 23: The OHRC launched a new 3-year strategic plan to advance human rights in Ontario. Addressing discrimination in employment is one of the 5 "urgent priority areas" listed in the plan.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Feb 16: The OHRC issued a statement condemning the increase in violence targeting education officials for actions to prevent anti-Black racism, homophobia and hate in the public schools systems and reminded the Ministry of Education of its Human Rights Code duty to protect such employees against violence and harassment.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Oct 26: The Ontario Human Rights Commission issued a policy statement condemning the practice of caste-based discrimination. While not specifically banned by human rights laws, the agency notes that excluding, harassing or affording less favourable treatment to persons based on their social caste may constitute discrimination on the basis of grounds that the laws do protect, including ancestry, creed, colour, race, ethnic origin, place of origin and/or family status.
Action Point: Find out how to create a religious accommodations policy for your workplace

Nov 30: Soon to be passed Bill 149 includes provisions that would make Ontario the first province to ban employers from making work experience in Canada a requirement in job postings or application forms. The law clears the way for internationally-trained immigrants who might otherwise be denied work in their field because they lack Canadian work experience.
Action Point: Find out about citizenship discrimination risks and how to avoid them

CASES

Discrimination: High Court Finds Oil Company Guilty of Citizenship Discrimination
Although a foreign engineering student had stellar credentials and a 3-year

postgraduate work permit, an energy company wouldn't offer him permanent employment without assurance of his eligibility to work in Canada on a "permanent basis." The student claimed he was the victim of discrimination on the basis of "citizenship." The Ontario Human Rights Tribunal agreed but the court reversed the order on appeal. Now, the province's top court has had the final word by finding the original ruling of citizenship discrimination reasonable and faulting the lower court for reversing it. Excluding otherwise qualified individuals from positions simply because they're not Canadian citizens violates the human rights laws even when, as was the situation in this case, the policy does make exceptions for some non-citizens. "Policies that discriminate on the basis of a prohibited ground are not saved on the basis that they only partially discriminate," reasoned the Court of Appeal [*Imperial Oil Limited v. Haseeb*, 2023 ONCA 364 (CanLII), May 23, 2023].
Action Point: Find out about citizenship discrimination risks and how to avoid them

Discrimination: Work Schedule Dispute Isn't About Family Status Discrimination
A court reporter wanted permission to start his shift at 9:30 rather than the scheduled 9 AM so he could drop his kids off at school. Management asked him to submit a formal request for accommodation. The request was denied and the reporter eventually left the job because of the unworkable schedule and sued the employer for discrimination. The Ontario Human Rights Commission dismissed the case. Maybe he had a valid claim for constructive dismissal, it reasoned, but that's not our department; we adjudicate discrimination claims and there were no allegations suggesting that termination was based on family status or any other protected ground [*Hunter v. HMKRO (Ministry of the Attorney General*), 2023 HRTO 1081 (CanLII), July 21, 2023].
Action Point: Find out how far employers must go to accommodate the scheduling needs of working parents

Discrimination: Personal Cell Phone Use Ban Isn't Family Status Discrimination
A customer service representative requested an accommodation from a company safety policy banning employee use of personal cell phones at work after her father became gravely ill. The company agreed that she could answer but not make emergency calls relating to her father. Overuse of the cell phone was an issue her boss brought up during the rep's subsequent 3-month performance review. Soon after that, she was terminated without being given a reason. The rep sued the company for family status discrimination and failure to accommodate. But the Ontario Human Rights Tribunal found no evidence, beyond the rep's own personal suspicions, that the company factored her family situation into the decision to terminate while citing the efforts it had made to accommodate her [*Brazzoni v. Canway Equipment Mtg. Inc*., 2023 HRTO 1612 (CanLII), October 31, 2023].
Action Point: Find out how far employers must go to accommodate the scheduling needs of working parents

QUÉBEC

LAWS & ANNOUNCEMENTS

Jan 30: Visible minorities are still underrepresented in management positions in public bodies across the province, according to a new Human Rights and Youth Rights Commission report. Among other things, the Commission recommends that both employers and unions set up mandatory training on the mechanisms for combating systemic racism and discrimination in the workplace.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

YUKON TERRITORY

LAWS & ANNOUNCEMENTS

Apr 25: Third Reading for Bill 22 which expands the powers of the Advisory Council on Women and Gender to include advising on issues relating to gender equity and equity for individuals who may face discrimination because of their sexual orientation.
Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace

Jul 31: That's the deadline to complete an online survey on employment barriers to Indigenous recruitment, retention and advancement and what the Yukon government can do to overcome them.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Jul 31: Online surveying concluded on employment barriers to Indigenous recruitment, retention and advancement and what the Yukon government can do to overcome them.
Action Point: Beware of employment practices that inadvertently perpetuate racial discrimination

Sep 1: Sometime this month, Yukon will begin online surveying to assess its progress and necessary adjustments in implementing the LGBTQ2S+ Inclusion Action Plan, the 5-year strategy it launched in 2021.
Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace

Oct 12: That's the last day for stakeholders to complete an online survey on the progress Yukon is making in implementing the 5-year LGBTQ2S+ Inclusion Act Plan that it launched in 2021. The next round of progress report consultations is scheduled for 2025.
Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace