

No Worker Left Behind: Human Rights Risks In Fast Moving Corporate Transactions



Overview

This case arises from a common business scenario – a fast-moving asset purchase deal – but resulted in a costly human rights ruling. In [Morasse v. Brandt Tractor Ltd.](#), the Human Rights Tribunal of Ontario (“HRTO” or the “Tribunal”) and, later, the Ontario Divisional Court (the “Court”) confirmed that employees on maternity or parental leave cannot be excluded from hiring decisions during a business transition.

The decisions reinforce a core human rights principle: even seemingly neutral, business-driven policies may be discriminatory if they disproportionately disadvantage employees on protected leaves.

Facts

The applicant was an employee of Nortrax Canada Inc. (“Nortrax”). She was on maternity leave when Nortrax sold substantially all of its assets to Brandt Tractor Ltd. (“Brandt”).

As part of the transaction, Brandt conducted a large-scale hiring process to staff its new operations using Nortrax employees. Of approximately 650 Nortrax employees, Brandt hired all but about 30. Importantly, due to a short timeline, none of the Nortrax employees who were on leave at the time of the asset transfer were contacted, interviewed, or offered employment – including the applicant.

Because Brandt did not offer her a position, Nortrax terminated her employment. Ms. Morasse filed a human rights application alleging discrimination in employment on the grounds of sex (pregnancy) and family status, contrary to the Ontario *Human Rights Code* (the “Code”).

The Decisions

Human Rights Tribunal of Ontario

The HRTO found that Brandt and Nortrax discriminated against the applicant on both alleged grounds by failing to consider her for employment and by terminating her employment while she was on maternity leave.

The Tribunal concluded that the employee’s maternity leave was a factor in the

adverse outcome. Brandt's decision not to interview employees who were unavailable during the transition period disproportionately affected employees on protected leaves, including those on maternity leave.

The Tribunal emphasized that an intention to discriminate is not required. Even where decisions are driven by timing constraints or operational pressures, they may still breach the Code if they have a negative impact on individuals protected under human rights legislation ([Morasse v. Brandt Tractor Ltd.](#),).

Ontario Divisional Court

Brandt sought judicial review, but the Court dismissed the application and upheld the Tribunal's decision.

The Court confirmed that, although Brandt was not the employee's employer and successor organizations do not automatically assume human rights obligations in asset purchase deals, Brandt was still a proper party to the complaint. As the Court stated, "it was Brandt's own allegedly discriminatory conduct in its hiring process that was the basis of that determination."

The Court also rejected Brandt's argument that it had no knowledge of the employee's maternity leave. It found that Brandt knew or ought to have known that its policy of not interviewing anyone on leave would adversely affect individuals who were away on protected leaves.

Importantly, the Court reaffirmed a principle long recognized by the Supreme Court of Canada: identical treatment may still result in inequality. The fact that Brandt's hiring policy applied uniformly to all employees on leave – and was based on legitimate business considerations – did not make it non-discriminatory.

Finally, the Court confirmed that a prohibited ground need only be a factor, not the sole reason, in the decision that led to the adverse impact. In this case, the employee's maternity leave was a factor in both Brandt's decision not to hire her and the termination of her employment by Nortrax.

Key Takeaways for Employers

This decision serves as an important reminder that how employers approach hiring decisions during restructuring or asset purchase deals can have significant human rights implications, whether they intend it or not. Employees on maternity, parental, or other protected leaves must be meaningfully included in hiring processes during business transitions. Even policies that appear neutral or are driven by legitimate business needs can still be discriminatory if they disproportionately affect protected groups.

Business urgency does not override human rights obligations, intent to discriminate is not required, and successor organizations in asset purchase deals may face liability for their own hiring practices – even without a formal employment relationship in place.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: [Sebastian Zhou](#)

FASKEN