

What Protection From Discrimination Do Employees Have On The Grounds Of Sexual Orientation?



Canada and particularly the province of Quebec are generally known to be “friendly” towards the rights of the LGBT community, including within the realm of employment.

It is interesting to note that the Supreme Court of Canada held in 1995 that although sexual orientation was not specifically listed as a ground for discrimination in the *Canadian Charter of Rights and Freedoms* (hereafter the *Canadian Charter*), it nonetheless constituted an analogous ground on which claims of discrimination may be based. The same Court went further three years later in deciding that provincial human rights legislation that omitted the ground of sexual orientation violated the *Canadian Charter*.

In the province of Quebec, fundamental human rights and freedoms are provided for in the *Charter of human rights and freedoms* (hereafter the *Charter*), which came into force in June 1976 and was granted quasi-constitutional status. The *Charter* is applicable to every matter that comes under the legislative authority of Quebec : therefore, employment relationships in enterprises falling under provincial jurisdiction are bound to respect the *Charter*.

at first, sexual orientation was not mentioned in the *Charter* but that changed in 1977 when Quebec became the first province in the country to officially forbid discrimination based on sexual orientation. Since then, if an employee or candidate to employment feels he has been discriminated against on the ground of sexual orientation, he may file a complaint before the “Commission des droits de la personne et des droits de la jeunesse du Quebec” (hereafter the Commission). If the Commission chooses to intervene, it has different processes whereby it will try to settle the matter out of court. However, if this proves to be impossible, the Commission may ultimately represent the complainant before the

Human Rights Tribunal where it will have to establish a *prima facie* case of discrimination.

As for employees who happen to work in a federally-regulated environment, the *Canadian Human Rights Act* (hereafter the Act) was amended in 1996 to explicitly include sexual orientation as one of the prohibited grounds of discrimination.

The Canadian Human Rights Commission (hereafter Canadian Commission) is the body responsible to receive and investigate complaints based on the Act and will be impartial throughout the dispute resolution process. Here also, it will try to settle the matter out of court at the earliest opportunity. However, if this proves to be impossible, it will refer the complaint to the Canadian Human Rights Tribunal. While not representing any of the parties involved in the litigation, the Canadian Commission may choose to represent the public interest if the situation has the potential to clarify human rights law in Canada.