

OVERVIEW OF HUMAN RIGHTS ISSUES

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For expert advice, call David Harris on 416 921 2771 and make a preliminary appointment to see if we can help you!

Human Rights

Here we go with that him or us thing again

Again it is necessary to distinguish between the federal and provincial legislation. The most significant difference is the limitation period for filing a complaint - 12 months under the Canadian Human Rights Act and 6 by the Ontario Human Rights Code.

Ontario's Verboten Acts

Both acts forbid discrimination in the hiring and termination process. Ontario's Code specific grounds of prohibited discrimination are 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.

Do you have a minute – how about 5 years ?

The long and short of the process of filing a Human Rights complaint is the inordinate amount of time it takes to take a case to hearing. Typically hearings are held 5 to 6 years after the event has taken place.

Sooo why bother with all this ?

The remedy is much like that of the Canada Labour Code unjust dismissal process. Reinstatement can result, as also may an award for lost compensation for the period from termination to the date of hearing.

The short summary is that the Human Rights process is wonderful if:

- a. You are independently well off and can sustain the wait;
- b. Or quite simply, there is no alternative.

Here is some good news

As with the Canada Labour Code, the process is usually free of any costs consequence should you lose (as long as the complaint is not brought in bad faith) and unlike the CLC, there usually is no need to have independent legal counsel as the Commission staff for the most part will present the claim for you.

Pain and Suffering

The highest sum that can be awarded for mental anguish under the Ontario Code is \$10,000. A recent decision found that each individual action which violated the Code allowed for individual sums of \$10,000 each.

The Feds

The federal counterpart is very similar in its prohibited grounds of discrimination which include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Both acts include pregnancy within the definition of "sex".

The federal act allows for an additional payment of \$20,000 where the employer's conduct is reckless, which presumably is something like the \$10,000 sum Ontario had in mind when it described the payment as mental suffering. The wording of the federal act seems to suggest more of a deterrent than compensatory motive.

Make some sense of all this, please!

Way back somewhere you may have read that the common law notice period can be increased where the employer's actions are unfair.

Well logically enough, which sometimes actually does happen in court, actions of the employer which are in violation of the Human Rights legislation can increase the common law notice period.

What this means is that you can sue for the common law notice thingmebopper and sue also at the same time arguing the actions which were in violation of the Code also sue increase the common law notice - talk about one stop shopping....

Also, a recent decision of the Supreme Court of Canada has held that actions which are in violation of the Human Rights legislation can lead to an award of punitive damages - again damages to punish rather than compensate.

Well what should I do ?

Call me crazy but it seems to me that there is no issue that the best remedy is a civil claim and sue for all at the same time. You may even be able (again not at home, please) to file a Human Rights complaint and sue at the same time - that one is for your lawyer !

OK I admit it. I have a conflict. I am a lawyer. I think that the Human Rights complaint process is slow. It's a great idea, but without wings, it just ain't going to fly.....!

A handwritten signature in blue ink that reads "D. Harris". The signature is stylized with a large, sweeping initial "D" and a cursive "Harris".

David Harris LL.B.