

Are You Ready for the New Human Rights Landscape?

Juliet Knapton



Can you run a job ad requiring candidates to have a driver's license? Do you have to accommodate your employee's time off to tend to a sick child? Can comments made in a confidential mediation be subject to the Human Rights Code? Do you need to accommodate a lawyer who is unable to meet a billable hour target because of a disability? How do you approach a complaint of body odour within the office environment?

There are changes afoot in the regulatory regime of the human rights landscape that will affect legal obligations within our firms, to our clients and to others to whom we provide service. These changes will affect all lawyers in all areas of law, whether they practise in sole, small, mid-sized, large or national firms.

Josée Bouchard, equity advisor at the Law Society of Upper Canada (LSUC), and Cynthia Petersen, discrimination and harassment counsel at the LSUC, recently presented a diversity workshop with the OBA Equal Opportunity Committee to inform us of this changing legal landscape and to answer many of the questions above.

Firms of any size must comply with the *Rules of Professional Conduct* (lawyers and paralegals), the *Human Rights Code of Ontario* (Code), the *Accessibility for Ontarians with Disabilities Act* (AODA), 2005 (and the coming *Accessibility Standards for Customer Service*) and the *Ontario Health and Safety Act* (OHSA). As you are aware, the Rules of Professional Conduct (Rules 5.04, 5.03) place special responsibility on lawyers and paralegals to respect human rights laws in Ontario. The Rules on discrimination and harassment apply to a lawyer or paralegal in their employment of lawyers or paralegals, students or other person in professional dealings.

Discrimination

Differential treatment, whether intentional or not, that imposes a disadvantage or a burden on a person or group of persons, or that results in the denial of a benefit to a person or group of persons, based on one or more of the prohibited grounds of discrimination.

The Code applies in the following contexts: employment, provision of services, contractual relationships, accommodation and vocational associations. Of particular interest to law firms is the recent decision *McCormick v. Fasken Martineau Dumoulin* (No. 2), 2010 BCHRT 347 (Can LII), where the Tribunal found that the Code applies to law partnerships.

Duty to Accommodate

The duty to accommodate requires an employer or service provider to accommodate employees, customers or clients on all of the grounds listed in the Code. The duty requires accommodation to the point of undue hardship. This means that some hardship to the employer is acceptable and to be expected, however, someone who requires accommodation also has an obligation to facilitate reasonable offers of accommodation. Any failure to provide reasonable accommodation based on human rights grounds constitutes discrimination.

The OHSA will see changes under Bill 168: wording that mirrors the Code will be in effect for issues of harassment. It also requires employers to develop and post written policies on workplace harassment and workplace violence (including a complaint mechanism) and to provide instructions to employees regarding the policies.

In January 2012, the new *Customer Service Standard* for the AODA will come into effect for all law firms. In the case of a firm with 20 or more employees, written policies, practices and procedures should be in place to address services to clients with disabilities. In all cases, training is mandated for every person who deals with members of the public or third parties on behalf of a provider.

The Standard requires that persons with disabilities be given an opportunity equal to that given to others to obtain, use and benefit from goods and services. The goods and services must be provided in a manner that respects the dignity and independence of persons with disabilities. Generally, the services should be integrated unless an alternate measure is necessary to enable a person with a disability to benefit from the good or services. The Standard will also come with enforcement measures and inspectors may attend to review a particular firm and have the power to levy administrative fines for non-compliance. As well, their orders may be sent to Superior Court for enforcement.

Avenues of Recourse for Employees or Clients

- an internal complaint
- contact the Discrimination and Harassment Counsel of the LSUC 1-877-790-2200 or assistance@dhcounsel.on.ca
- a complaint to the LSUC
- an application to the Human Rights Tribunal of Ontario
- civil recourse (e.g. wrongful dismissal)

Protecting Employers from Liability

- ensure awareness and training for all staff and management
- have a complaint mechanism

- act promptly when handling complaints
- deal with complaints seriously
- meet obligations to provide a healthy work environment
- keep parties informed of outcomes

In general, a Discrimination and Harassment Policy should:

- contain a strong statement of the employer's commitment
- define discrimination and harassment
- have a redress mechanism
- establish a safe counsel/advisor or refer to the DHC
- have penalties and remedies
- have an implementation plan

Are you ready?

The Law Society has resources for developing a harassment and discrimination policy on its website. The OBA Equality Committee also offers resources to its members at www.oba.org.



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