



Education Law eBulletin

A newsletter for educators.

February 2006

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human rights

Proposed amendments to human rights system

On February 20, 2006, the Ontario Government announced that changes to the current provincial human rights regime will be forthcoming this Spring. The proposed changes include the introduction of pro-active measures including public education, research and monitoring to address systemic discrimination. The overall goals of the proposed reforms are stated to be the continued advancement of human rights and improvement of access to justice for those who believe they have been treated in a discriminatory manner.

Changes to the system are touted to provide a "modern, streamlined and efficient way of resolving disputes by allowing individuals or groups to file claims directly with the tribunal." This appears to suggest a direct-access model, similar to that in use in British Columbia, and represents a marked departure from the current process. At present, a complaint is filed with the Commission and investigated by Ontario Human Rights Commission personnel. After the complaint is investigated, the Commission decides whether or not to refer the particular complaint to the Tribunal for a hearing based on the evidence obtained during the investigation. The Commission thereby acts as a screening process, weeding out spurious complaints. Under a direct-access model, it presumably will fall to the Tribunal to curb frivolous or baseless complaints.

A direct-access model also seems to contemplate that individual complainants will be responsible for presenting their case of discrimination before the Tribunal, including making their own arguments or incurring litigation costs. Depending on the nature of the reforms, this may be problematic as individuals who have a legitimate claim but do not have the resources to fund a complaint may no longer be able to rely on the Commission to investigate and bring the complaint before the Tribunal. As a result, legitimate claims may go unheard which does not accord with the stated goal of increased access to justice.

Another matter still unknown is whether the new regime will amend the Tribunal's powers to award costs at a hearing. Current legislation provides that the Tribunal may only award costs in favour of the respondent against the Commission, and then only when the complaint has been deemed trivial or vexatious; consequently, receiving an award of costs occurs relatively rarely. The current legislation does not allow a successful respondent to seek costs against a complainant, and a successful complainant does not have the ability to seek costs against anyone.

Accordingly, it is entirely possible the Tribunal will experience an overall increase in both legitimate and frivolous complaints under the new model. However, unless the new regime provides an effective mechanism for screening frivolous or spurious complaints and/or enables the Tribunal to award costs to successful parties to act as a disincentive for baseless complaints, the new regime may not be much of an improvement over the existing beleaguered process.

in the courts

In its decision issued January 11, 2006, *Newman v. Halstead*, the British Columbia Supreme Court awarded damages, punitive damages and injunctive relief to 11 plaintiffs (nine of them public school teachers, one a retired public school board trustee, and one a parent) who sued the defendant for defamation.

The defendant, concerned that certain teachers, trustees and parents in the community had acted improperly, posted her views which included very serious allegations of misconduct on Internet websites, chat rooms and via e-mail. The defendant had established a website listing the plaintiffs' names and posting some of the plaintiffs' pictures under the heading of "Bully Educators" or "Bully Parent" where applicable. The plaintiffs' names and/or pictures were linked to information and commentary posted by the defendant regarding the plaintiffs' alleged misdeeds.

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... In the courts, *continued*

For reasons not explained, the defendant (by that time, self-represented) did not appear at trial. The plaintiffs pressed the court to proceed with the trial on the merits rather than issue a default judgment. The Court held that, since the defendant knew of the date and place of trial and since her absence was deliberate, the trial would proceed.

Finding that the defendant had previously filed human rights complaints and freedom of information requests, and had dealt with the provincial Office of the Ombudsman, the Court found that the defendant was well-acquainted with the processes involved when dealing with authoritative institutions in the province. The Court considered the context in which the alleged defamatory statements were made. The Court noted that since 1997, the defendant had been highly conflict-driven, waging wars with everyone from parents to teachers, trustees, and the Superintendent of Schools.

The Court held that the labels "Bully", "Least Wanted Educators" and "B.C.'s Least Wanted" were clearly defamatory as they lowered the plaintiffs in the eyes of the reasonable observer, and impaired their personal and professional reputations. The Court also noted that the defendant had actively promoted her website and received press coverage in relation to it throughout the year 2003. Finally, the Court found that the seven plaintiffs named in the defendant's online charts had never been charged with a criminal offence, nor had they been decertified by the College of Teachers or otherwise disciplined. The comments were therefore found to be defamatory.

Although the defendant did not attend the hearing, the plaintiffs insisted that the Court address the available defences at trial due to the importance of the case to the plaintiffs. The Court reviewed the defences of fair comment and justification, and found that neither were applicable as both have as their foundation proof of truth. The Court found that, based on the defendant's responses in discoveries, it was clear that the statements were either false, inaccurate or grossly exaggerated and the motive for the comments was malice.

The Court awarded damages to the individual plaintiffs for defamation ranging from \$1,000 to \$150,000, and punitive damages were set at \$50,000 to be shared equally by the plaintiffs. Finally, the Court found that the exceptional remedy of injunctive relief was appropriate given that the defendant was likely to continue to publish defamatory statements and because the plaintiffs were not likely to recover the damage awards from the plaintiff. Accordingly, the Court enjoined the defendant from making any false statements, about the plaintiffs or others, via the Internet or otherwise.

private career colleges

In February 2006, Statistics Canada released its Analytical Paper, *Canada's Private Colleges: The Lesser Known Players in Postsecondary Education*. The study profiled individuals who graduated from Ontario's more than 450 registered private career colleges. It also examined the labour market outcomes of these individuals, including earnings and employment rates. Data reviewed showed: that private colleges lost ground in the postsecondary education market between 1993 and 2003; during this same 10-year period, the number of young adults aged 25 to 34 years holding a certificate from a private college plunged by almost one-half; in 2003, private college certificate-holders earned roughly the same as high school graduates but were more likely to be employed; and, more women are now graduating in courses related to business and finance.

To access the full paper, go to: <http://www.statcan.ca/english/research/11-621-MIE/11-621-MIE2006036.pdf>

caselaw

Canadian Union of Public Employees, Local 3911 v. Athabasca University Governing Council

Alberta Court of Queen's Bench

The Court upheld a decision of the Alberta Labour Relations Board finding that tutors and markers who were employed by the Athabasca University, but performed their work in a location other than the Province of Alberta, were not members of the bargaining unit for which the applicant held certification.

Re Hollis

British Columbia Labour Relations Board

The Board held that a union had acted arbitrarily in settling a grievance on behalf of one employee in a manner that negatively affected another employee because the union did not fulfil its onus in proving that its decision to settle the grievance was "reasoned".

Hammond v. Hamilton-Wentworth District School Board

Ontario Superior Court of Justice

The Court dismissed an application for an injunction that would have forced the school board to allow the applicant-student to play competitive football. Under the board's policy, the student, who had transferred to a school within the board to obtain extra credits, was ineligible to play. The Court held that the school board's decision was not patently unreasonable.

Summaries of these cases and others can be found in the Shibley Righton Education Law NetLetter published by Quicklaw. Visit www.quicklaw.com.

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