

## employment and labour relations bulletin

October 2008

### The Importance of an Anti-Discrimination Policy

In June 2008 there were major changes to the human rights system for provincially-regulated businesses in Ontario – but most employers are already aware of this fact. What employers need to consider now, are the practical steps they can take to ensure they are well placed to defend against complaints, (now called “applications”) to the Human Rights Tribunal of Ontario (the “Tribunal”) under the Ontario *Human Rights Code’s* (the “Code”) new system. Some effective pro-active measures employers can undertake are addressed below.

#### New Response Requirements

The new form for responding to applications to the Tribunal is significantly more detailed than the format previously accepted by the Ontario Human Rights Commission. One major difference is that the new Response form includes specific questions respecting an organization’s internal human rights policies, including:

- Do you have a policy related to the type of discrimination alleged in the Application?
- Do you have a complaint process to deal with discrimination and harassment?
- Did the Applicant make a complaint under the internal complaint process about the facts of this Application?
- Describe how the organization responded and what was the outcome of the complaint process.

In addition, a respondent to a human rights application must provide a copy of its policy on discrimination and harassment as well as a copy of its complaints process to the Tribunal with its Response form.

The Tribunal’s focus on internal policies and processes suggests that such matters may be given closer scrutiny under the new human rights system. Therefore, prudent employers should be considering the above questions before they are asked to defend against a human rights complaint.

### Time to Take Action

Some employers may not develop human rights policies because they think that respect for human rights is a common sense principle, or that discrimination is not a problem in their workplace. Other employers have had human rights policies in place for many years, but have not reviewed them recently to ensure that such policies reflect changes in applicable laws. Moreover, many employers may have appropriate human rights policies, but employees are not aware of the policies or individuals in the workplace are not strictly following such policies.

Employers who continue to neglect their human rights policies and procedures in these ways may now face greater risk and increased scrutiny by the Tribunal. Therefore, the time has come for employers in Ontario to take pre-emptive action against potential human rights complaints.

In particular, the following basic steps taken now could play a key role in responding to a future human rights application:

- (1) Develop a comprehensive human rights policy.  
Employers that do not have a human rights policy with an effective complaint resolution process risk adverse inferences by the Tribunal. Developing such a policy is a prudent step regardless of the size of the workplace. Small businesses are subject to the Code in the same manner as large businesses, and the potential financial impact of a human rights complaint can be particularly damaging for smaller employers.
- (2) Review the company's human rights policy.  
Employers that have an existing human rights policy would be well advised to review that policy now, in consultation with qualified legal counsel, to ensure

that it is up-to-date and compliant with all applicable laws.

- (3) Provide human rights training to employees.  
Human rights policies and complaints processes do little good if employees are not aware of them or are not following them. This may be as simple as internally reviewing the organization's policies and procedures with employees, or it may involve a more comprehensive training session conducted by an outside expert, depending upon the needs of the workplace.

These simple proactive steps may save an employer significant time and money in the long run.

Employees who understand human rights laws are less likely to engage in conduct that could be perceived as discriminatory. Further, employees who feel that there is an effective internal mechanism for addressing complaints may be less inclined to seek a remedy through the Tribunal. Finally, even if an application to the Tribunal cannot be avoided, appropriate human rights policies and training will assist the employer to defend against such an application by demonstrating that it does not condone discrimination and has taken steps to prevent violations of the Code.

### For Further Information

Although this bulletin is focused upon practical considerations, employers who want a summary of the legislative changes to the Code should refer to the following prior McMillan LLP Employment and Labour Relations Bulletins: "[Today's the Day: The Ontario Human Rights Process Changes](#)" (June 30, 2008) and "[Still Awaiting Major Changes to the Human Rights Process in Ontario](#)" (May 2007).

*Written by Lyndsay Wasser*

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### A Cautionary Note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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and international practice and has grown to be one of the top 20 largest firms in Canada. The firm is agile and flexible, and committed to always striving for excellence.

The members of the Employment and Labour Relations Group have the expertise and experience to deal efficiently and effectively with all matters rising out of employment and labour law, as well as planning for legislative changes, structuring of business activities, and any other related matters.

If you have any questions about your obligations to employees on Election Day, please do not hesitate to contact any member of the Employment & Labour Relations group.

David Elenbaas	416.865.7232	david.elenbaas@mcmillan.ca
Darryl Hiscocks	416.865.7038	darryl.hiscocks@mcmillan.ca
Dave McKechnie	416.865.7051	dave.mckechnie@mcmillan.ca
Kim Ozubko	416.865.7840	kim.ozubko@mcmillan.ca
Karen Shaver	416.865.7292	karen.shaver@mcmillan.ca
Cheryl Thacker	416.865.7893	cheryl.thacker@mcmillan.ca
Lyndsay Wasser	416.865.7083	lyndsay.wasser@mcmillan.ca
Dilani Wright	416.865.7242	dilani.wright@mcmillan.ca

[www.mcmillan.ca](http://www.mcmillan.ca)



McMillan LLP

Toronto | t 416.865.7000 | f 416.865.7048

Montreal | t 514.987.5000 | f 514.987.1213

Barristers & Solicitors