

Case In Point

HRTO Considers Allegations of Age Discrimination in Employer Hiring Practices

Date: November 28, 2012

A recent decision of the Human Rights Tribunal of Ontario (the “Tribunal”) reaffirms Tribunal jurisprudence that an employer’s decision not to interview or hire an older job candidate will not necessarily be a violation of the Ontario *Human Rights Code* (the “Code”).

In [Loose v. Ontario \(Education\)](#), the applicant applied for a position posted by the respondent, which he believed he was well-qualified to perform. When the applicant was not selected for an interview, he filed an Application with the Tribunal alleging that the only explanation for his rejection as a candidate was his age. The respondent noted that the applicant was one of thirty people responding to the job posting and that those persons responsible for the hiring process were unaware of his age, which was not referenced in his application.

At a Summary Hearing, the Tribunal considered whether the Application should be dismissed as having no reasonable prospect of success. Based on the evidence, it concluded that the applicant’s allegations were entirely speculative and that there was nothing to suggest the respondent was aware of the applicant’s age when it decided not to offer him an interview.

Of importance to employers, the Tribunal held that differences in age among candidates for a job opportunity is not sufficient in itself to establish age discrimination. Rather, an applicant alleging age discrimination must establish that his age distinguished him or her from the other candidates.

At a time when there is an aging workforce, this decision is a reminder for employers to keep certain points in mind when recruiting employees:

- employers should not ask job candidates to disclose their age during the hiring process;
- an employer should use objective factors to determine the most qualified candidate during the hiring process; and
- a violation of the *Code* will occur if a candidate’s age is directly or indirectly a factor in an employer’s decision not to hire that person.