Case In Point

University's Removal of Controversial Posters Not Discriminatory under Human Rights Code

Date: February 22, 2013

In its recent decision SAIA v. Carleton University, the Human Rights Tribunal of Ontario ("Tribunal") found that the decision by Carleton University to remove certain posters from its campus was not discriminatory, nor was it driven by discriminatory animus against Palestinian students.

The University had a policy that posters must be approved by the appropriate authority and placed in a designated area. Without seeking the requisite approval, the Students Against Israeli Apartheid ("SAIA") put up posters which contained "an image of an Israeli helicopter gunship aiming a missile at a Palestinian child holding a teddy bear" throughout the campus and outside of the designated areas. The posters were intended to promote an event entitled "Israeli Apartheid Week." The University had the posters taken down without consulting the SAIA, as was its practice in removing unauthorized posters, and it subsequently refused approval for the posters to be re-posted.

The SAIA alleged that it was denied freedom of expression and that the University had discriminated against its members in the provision of goods, services and facilities on the grounds of ancestry, ethnic origin and place of origin. The University submitted that the removal of the posters and the refusal to re-post them was based on concerns for student safety. The incident occurred at a time when there were heightened tensions on the University campus surrounding events in the Middle East, during which time the University had received an unprecedented number of student complaints regarding hate-related incidents.

The Tribunal found that there was no evidence of any discriminatory intent behind the University's decision to remove the posters and to refuse to allow them to be re-posted. The University had not given preference to the concerns of Jewish students, as alleged by the SAIA; rather, it had made its decision in good faith and based on its own assessment of what it perceived to be a deteriorating situation. In so finding, the Tribunal noted that while "the ability to engage in lawful political activity and free expression of political opinion are fundamental rights in Canadian society" those rights are not proscribed grounds under the *Human Rights Code* and therefore were outside the Tribunal's jurisdiction.

This decision is helpful to employers and educational institutions which are faced with potentially controversial situations which engage prohibited grounds such as ethnic origin or place of origin. The Tribunal examined the response of the University and found that it made its decision in good faith without any differential treatment, after it had considered the potential volatility of the situation and any risks to student safety. It noted that the University did not ban the campus event in question or prevent the students from otherwise promoting the event. There was, therefore, no "taint" of discrimination within the meaning of the *Code*. Acting in a good faith and balanced manner which allows both parties to express their point of view within reasonable limits will go a long way towards establishing that the employer or educational institution acted without discrimination.