News

Significant decision on establishing “prima facie discrimination” rendered by the Court of Appeal for Ontario

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The Court of Appeal for Ontario has rendered a significant decision in *Peel Law Association v. Pieters* regarding the test for establishing a *prima facie* case of discrimination.

The Court upheld a finding of the HRTO that race and colour were factors in the questioning by a librarian of three applicants (two lawyers and a law student) who self-identified as black and who were using a lounge reserved for exclusive use by lawyers and law students. In finding that a *prima facie* case of discrimination had been established, the HRTO held the respondents failed to establish that the questioning was not discriminatory. The Divisional Court set aside that decision on judicial review as being unreasonable.

The Court of Appeal found the Divisional Court erred in its application of the *prima facie* discrimination test, in particular its imposition of a requirement that an applicant establish a “causal nexus” between adverse treatment and a prohibited ground of discrimination, stating that “[a]ll that is required is that there be a ‘connection’ between the adverse treatment and the ground of discrimination. The ground of discrimination must somehow be a ‘factor’ in the adverse treatment.” Moreover, the Court held that the HRTO had not reversed the legal burden of proof, distinguishing between the legal and evidentiary burdens of proof.

This decision may ultimately have an impact not only on the conduct of human rights hearings, but on the availability of summary dismissals under Rule 19A of the Tribunal’s Rules of Procedure.

For a detailed discussion of this case, see our Case in Point blog post, “Court of Appeal for Ontario Upholds HRTO Finding of Racial Profiling, Clarifies Test Applicants Must Meet to Establish a Prima Facie Case of Discrimination.“