FTR Quarterly

"Bad Customer Service" – or Breach of Human Rights Legislation?

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Two recent decisions released by the Ontario and British Columbia Human Rights Tribunals address the obligations that restaurants owe to their customers under each province's respective human rights legislation – and provide other service-based organizations with food for thought when it comes to addressing customer demands.

The So-Called "High Maintenance" Customer

In *P.G. v Groupe Restaurant Imvescor Restaurant Group Inc. o/a Baton Rouge Restaurant* (*Imvescor*), the Applicant suffered from a number of diagnosed mental illnesses, including post-traumatic stress disorder, obsessive compulsive disorder and germaphobia. He had, for several years, been a regular customer at the Respondent's restaurant, developing a routine with management that would cater to his disability and allow him to enjoy a meal with his wife.

Unfortunately, that routine changed after the restaurant came under new management. The Applicant was denied his requested accommodations and, following a number of visits, was ultimately asked to leave the restaurant. He was further told that nobody wanted to serve him because he was "high maintenance," and that the restaurant would no longer be able to accommodate his needs. An offensive comment about his disability was also allegedly made.

In light of this, on the basis of the Applicant's credibility and the uncontradicted evidence, the Ontario Human Rights Tribunal found that the restaurant had discriminated against the Applicant on the basis of disability contrary to the protections set out in the Ontario *Human Rights Code*. In particular, the Tribunal found that the Respondent had refused to accommodate the Applicant on more than one occasion and had ultimately prevented him from accessing their services by asking him to leave the restaurant. The Tribunal noted that the refusals made by the restaurant were unfounded and were often related to "very simple accommodation such as not putting a lemon slice in his water."

Moreover, the Tribunal found that the comments made by the manager were hateful and discriminatory and that the lack of sensitivity on the part of the manager resulted in injury to the Applicant's dignity, feelings and self-respect. The Applicant was granted an award of $12,000 in damages.

Mere Customer Preferences, or Reasonable Accommodation Requests?

The decision in *Ryan v Earl's* released by the British Columbia Human Rights Tribunal came soon after *Imvescor*. The Applicant, Mr. Ryan, had filed a complaint against Earl's alleging that the restaurant discriminated against him on the basis of his family status. This complaint followed an occasion during which he had visited the restaurant and had been refused a high chair for his 12-month old baby.

Earl's filed an application to dismiss the complaint without a hearing under s. 27(1)(c) and (g) of the applicable human rights legislation. The restaurant did not deny that it failed to offer the Applicant a high chair, rather it argued that it offered reasonable alternatives to Mr. Ryan's requests. The restaurant said that at locations where high chairs or booster seats were not available, parents were free to bring their own seating, hold the child on their laps or keep the child on the booth bench beside them.

Earl's argued that Mr. Ryan's application should be dismissed on the basis that he was seeking a perfect or preferred accommodation, rather than the reasonable accommodation to which he was entitled pursuant to British Columbia's human

rights legislation. Earl's emphasized that Mr. Ryan was not denied services, and in fact made the choice not to eat at the restaurant when his preferred accommodation was not provided. The restaurant argued that the fact that Mr. Ryan felt that a lack of high chair would make his meal less enjoyable did not constitute discrimination.

The Tribunal concluded that there was sufficient merit to justify a full hearing. It could not determine, on the basis of the evidence presented, whether Mr. Ryan experienced unequal and discriminatory access to Earl's services or whether he was requesting an accommodation that accorded with his personal preference. If the former became apparent at trial, it could be found that Mr. Ryan had been discriminated against in the provision of services on the basis of his family status.

Tips and Takeaways for Customer Service Providers

These decisions serve up important takeaways for all service industry organizations. Provincial and federal human rights legislation provides that every person has a right to equal treatment in the provision of services, goods and facilities without discrimination. Service provider employers are not only expected to protect their employees from discriminatory conduct, but are also obligated to extend this protection to patrons and other customers and guests who use their services.

To minimize your organization's potential liability, consider adopting the following best practices:

- ensure employees are aware of, and periodically trained on, the requirements under applicable human rights legislation – in particular, ensure employees are aware of the applicable prohibited grounds of discrimination
- ensure employees can identify and effectively respond to requests for accommodation on protected grounds – and don't dismiss customer demands without properly ascertaining the customer's reason for the request
- grant simple requests that impose little hardship on the employer
- although customers cannot expect perfect solutions, ensure every effort is made to provide reasonable accommodations
- be sensitive to the differing needs and circumstances of customers
- treat all individuals walking through the door with respect and dignity – and take their accommodation requests seriously.

If you have any questions, please contact Amanda E. Lawrence at 416.864.7030 or your regular Hicks Morley lawyer for more details.

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