Student pay: Court of Appeal confirms discriminatory practice

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In the recent decision, *Aluminerie de Bécancour Inc. v. Commission des droits de la personne et des droits de la jeunesse (Beaudry et al.), 2021 QCCA 989*, the Québec Court of Appeal dismissed the appeal filed by the employer, Aluminerie de Bécancour Inc. (the Employer), and confirmed that the existing wage distinction between students and other employees constitutes discrimination on the basis of their social condition. This decision provides a solid framework for the conditions under which an employer may offer certain types of employees a distinct pay.

Background

In January 1995, the Employer decided to lower the pay of their student employees to 85 per cent of the lowest wage index in the collective agreement, claiming, among other things, that they performed fewer duties than other employees. The pay disparity between students and casual/regular workers was well established in the Employer's current collective agreements, and was maintained or increased upon renewal.

In light of this disparity in treatment, a complaint was submitted to the "Commission des droits de la personne et des droits de la jeunesse" (the Commission) by the union representing the students. The Commission upheld the complaint and initiated an appeal for damages before the *Human Rights Tribunal* (the Tribunal), claiming both damages and interest, and moral damages.

Tribunal decision

In its claim, the Commission alleged that the Employer violated section 19 of the *Charter of Human Rights and Freedoms* (the Charter) by paying students less for work equivalent to that performed by other employees. The Commission claimed that this decision discriminated against students on the basis of their age and "social condition", which are prohibited under section 10 of the Charter. The Employer argued that their decision was justified in light of the students' different duties and training from those of other employees. They also claimed that the wage disparity was not based on one of the provisions of discrimination set out in the Charter.

Ultimately, the Tribunal agreed with the Commission's arguments and found that there was a distinction based on prohibited grounds that compromised the students' right to equal treatment for work of equal value. This wage disparity was not justified and therefore constituted a discriminatory measure.

The Tribunal therefore ordered the Employer to pay a compensation for material and moral damages to each student affected by the measure, and ordered the unlawful clauses of the collective agreement be amended. Dissatisfied with this ruling, the Employer appealed the decision.

Québec Court of Appeal decision

Despite the Employer's contentions, the Court of Appeal determined that the Tribunal did not err in concluding that student status is included in the notion of "social condition" and that the wage disparity was indeed discriminatory.

1. *Prima facie* case of discrimination (based on the first impression)

First, the Court of Appeal clarified the burden of proof required when challenging the discriminatory nature of a measure. Contrary to the Employer's claims, the Court determined that proof of discrimination arising from prejudice, stereotyping or social context is not required to support a claim under section 10 of the Charter, unlike a claim based on section 15 of the *Canadian Charter of Rights and Freedoms*. In other words, it is not necessary to prove that the group being discriminated against consists of vulnerable individuals in order for a measure to be found discriminatory. Only three elements must be proven in order to establish discrimination:

- a "distinction, exclusion or preference" must exist;
- it must be based on one of the grounds listed in the first paragraph;
- it must have “the effect of nullifying or impairing" the right to full equality in the recognition and exercise of a human right or freedom.

Essentially, in order to establish *prima facie* discrimination, proof of arbitrary disadvantage is required. In this case, the wage disparity imposed on students alone and assumed in the collective agreements constitutes the manifestation of such a disadvantage.

2. Social condition as a prohibited ground of discrimination

Second, the Court of Appeal determined that student status falls within the notion of "social condition" under the Charter. In reaching this result, the Court confirmed the application of the following jurisprudential definition of "social condition":

> "The position that a person occupies within a community on the basis of his or her origins, level of education, occupation, income and the perceptions and representations that are linked to certain objective elements within his or her community, a position that may constitute a temporary state."

In this case, the Court of Appeal determines, without the need for any expert evidence, that the students employed by the Employer constitute an identifiable social group in the

community and are stereotyped. As a result of this affiliation, these students were denied the fundamental right to receive equal treatment to that of other employees. Furthermore, arguments that student status is a personal choice or that it may be an enviable status do not justify discriminatory treatment.

In the absence of a valid reason justifying this wage disparity by the Employer, the Court of Appeal confirms the initial decision and the remedies granted b the Tribunal.

What to remember?

First, this decision is particularly interesting as the Court of Appeal confirms that a "discriminatory practice" claim (s. 10 of the Charter) does not require additional evidence of discrimination arising from prejudice, stereotypes or social context. In other words, while it may be a useful indicator, it is not an integral element of the three-part test that must be applied to establish the presence of discrimination.

In addition, the Court of Appeal clarifies the definition of "social condition". Essentially, this notion refers to the rank and place that an individual occupies in society. Thus, in order to establish discrimination on this ground, it is sufficient not only to establish membership to an identifiable social group, but also to show that it is because of this affiliation that the individual is subject to a distinction.

In this case, the Court of Appeal's teachings are aimed specifically at employees with student status. Nevertheless, the broad and liberal interpretation of the concept of "social condition" may lead to a wider application of this concept to other social groups and, potentially, to a modified approach by employers towards them.

By

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