“what’s The Origin Of Your Name?” – A Discriminatory Question Or Not?

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For several years now, the concept of diversity has been an important concern for companies seeking manpower. In an effort to diversify the staff composition of a business, learning more about candidates and their ethnic background is often encouraged. While it may seem relevant to certain recruiters to ask wide-ranging questions about a candidate’s ethnic origin, it must not be forgotten that it is prohibited to ask any question dealing with any of the grounds of discrimination listed in Article 10 of the Charter of Human Rights and Freedoms. This list includes, in particular, ethnic or national origin. Any such question will automatically be considered as "discriminatory," unless the potential employer can show:

that the ethnic origin information is necessary to assess a candidate’s skills or competencies for a job or are justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group; or
that the ethnic origin information will permit application of an equal access to employment program in force at the time the application is made.
Accordingly, although the question “what’s the origin of your name?” may seem harmless, the Tribunal des droits de la personne, in a series of decisions involving the same candidate, Mr. Salim Kerdougli, has just confirmed that such a question may be discriminatory.

1. ***Kerdougli c. La Vie en Rose, 2018 QCTDP 8***
   Mr. Kerdougli was applying for the position of Logistics Coordinator – International Division. He had already been interviewed twice, and, at the third and final interview, he was asked the origin of his name, to which he responded "Algerian." Mr. Kerdougli’s application was then rejected and he filed a complaint, contending that a discriminatory question had been posed to him, namely the question "what’s the origin of your name?" La Vie en Rose explained that the question had been asked, since the company had business partners, notably in Algeria, and his ethnicity could have given Mr. Kerdougli’s candidacy a certain advantage.

   The Tribunal refused La Vie en Rose’s explanation, stating the evidence did not establish how Mr. Kerdougli’s ethnic origin could possibly have constituted an advantage. The Tribunal also stressed the fact that the other candidate had not

been asked that same question. The Tribunal therefore condemned La Vie en Rose to moral damages in the amount of $5,000.

Accordingly, where an employer wishes to ask a question having to do with a candidate's ethnic origin, they must make sure that they can demonstrate to the Tribunal, by preponderant evidence, that that question is truly related to the requirements of the position to be filled.

2. ***Kerdougli c. GE Renewable Energy Canada Inc. (Alstom réseau Canada inc.), 2018 QCTDP 7***

   In this case, Mr. Kerdougli was applying for the job of Specialist, Transport and Logistics-Supply with GE Renewable Energy Canada Inc. (GE). GE acknowledged that Mr. Kerdougli had been asked the ethnic question, but was of the opinion that the question had not been part of the interview. The question was allegedly asked by one of the members of the selection committee before all members of the committee were present, and was intended to put the candidate at ease, since he appeared nervous. The question had not therefore been asked in the formal context of the interview with the selection committee.

   That argument was dismissed by the Tribunal, which based its ruling on the interpretation of the term "interview". Under the Charter of Human Rights and Freedoms (Charter), "interview" must be widely and liberally construed. In consequence, the term includes any seeking of information from a candidate, regardless of the stage of the hiring process.

   In short, any meeting or any exchange of information, by whatever means, between a candidate and a potential employer must comply with the provisions of the Charter. Without any grounds that would have justified the question's relevance, GE was therefore condemned to pay $4,000 in moral damages.

3. ***Kerdougli c. Les Aliments Multibar inc., 2018 QCTDP 19***

Mr. Kerdougli filed a complaint with the Tribunal for the third time after having submitted an application for the position of receiving and shipping supervisor with Les Aliments Multibar inc. (Multibar), and, once again, he was asked "what's the origin of your name?" Mr. Kerdougli did not get the job.

It is noted in the decision that Multibar's manager presumably asked the question in order to ascertain why Mr. Kerdougli had referred to him as "tu" rather than "vous." The manager was thus attempting to ascertain whether Mr. Kerdougli was showing a lack of respect or whether he simply did not have a sound grasp of the French language.

The Tribunal did not accept Multibar's explanations, holding that the evidence contradicted the manager's contentions, particularly since Mr. Kerdougli's CV, his academic record and the number of years he had resided in Québec clearly showed that he mastered French. The Tribunal recognized that Multibar's manager may have been put out, perhaps even irritated by Mr. Kerdougli using "tu" when speaking to him. The Tribunal determined that the manager should have addressed that issue directly and more effectively with the candidate. In short, there had been no need to question the candidate about his ethnic or national origin under the circumstances.

In this case, the Tribunal ordered Multibar to pay $5,000 in moral damages and $1,000 in punitive damages.

To summarize, these three decisions show that the question "what's the origin of your name?" can cause serious headaches for employers, even without any ulterior motive. As a matter of principle, therefore, employers must refrain from asking candidates that question, in either a formal or an informal context, and should reflect on whether such a query has any genuine relevance to the job to be filled.

By

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