

# May a Québec Employer Require That a Candidate Undergo a Pre-Hiring Medical Examination Without Making a Conditional Offer of Employment?

July 04, 2016

More and more employers in Québec have been requiring job applicants to submit to a medical examination as part of the recruitment process – provided, of course, that the sought-after position entails medical requirements justified by the duties of the job, **within the meaning of the Charter of Human Rights and Freedoms** (the "Charter"). This practice has led a number of employers to wonder whether they are entitled to refuse to hire a candidate on the basis of the results of a pre-hiring medical exam.

For several years in Québec, the Human Rights and Youth Rights Commission (the "Commission des droits de la personne et des droits de la jeunesse" – the "Commission") has held that an employer must make an offer of employment conditional upon the job applicant's success in a medical examination before requiring that the applicant undergo the exam. The Commission contended that it wished to avoid allowing employers the freedom to hire only candidates who are in "exemplary", or even "perfect", health.

In a recent decision rendered by the Québec Human Right and Youth Rights Tribunal (the "Tribunal des droits de la personne et des droits de la jeunesse" – the "Tribunal"), *Commission des droits de la personne et des droits de la jeunesse c. Bathium Canada inc.*<sup>1</sup>, one of the issues in dispute was whether the administration of a pre-hiring medical examination by the Bathium company, without its having first made any formal conditional employment offer, had jeopardized the candidate's right to a hiring process free from discrimination, as per the Charter.

By concluding that it is not compulsory for a pre-hiring medical examination to be preceded by a conditional offer of employment, the Tribunal has set aside the position traditionally upheld by the Commission.

More particularly, in this decision, the Bathium company was actively seeking qualified candidates to meet its increased needs for the development, manufacture and marketing of materials.

Following an interview, Bathium invited Mr. Genewicz to report to a medical clinic for the second stage of the hiring process, a medical examination. Bathium justified the medical exam by the fact that certain technical skills and good manual dexterity were required to do the job concerned. At that stage of the recruitment process, no offer of employment, conditional or otherwise, had been made.

The medical certificate issued by the clinic indicated that the candidate was in excellent health, but that he was suffering from "morbid obesity". A few weeks later, Bathium advised Mr. Genewicz that his application had been rejected. Convinced that the rejection was based on his personal medical condition, as discovered in the medical exam, Mr. Genewicz filed a complaint with the Commission, claiming discrimination.

## **In Québec, it is not mandatory to precede a pre-hiring medical examination by a conditional employment offer.**

After having examined the human rights legislation of other provinces, as well as the **parliamentary deliberations recorded in the Journal des débats**, the Tribunal concluded that the administration of a pre-hiring medical examination by Bathium, without its having first made an official offer of employment conditional on positive results of that exam, did not jeopardize the job applicant's right to a discrimination-free hiring process. Such an examination may therefore form part of an extended interviewing process, in order to confirm the candidate's qualifications.

**It would therefore appear that the state of the law in Québec, pursuant to the interpretation by the Tribunal in this recent decision, allows employers to analyze the necessary and required medical information about applicants before making them any job offer.**

The Tribunal further held that Bathium ordinarily called on one particular medical clinic that was well aware of the physical requirements of positions with that employer. Since that service provider was not available to complete Mr. Genewicz's examination, Bathium had engaged another medical clinic to conduct his medical exam. That clinic sent the employer the full results of the medical examination, rather than simply informing the company whether the candidate's health was compatible with the requirements of the position for which he was applying.

The Commission sought a mandatory order that Bathium's existing practice was discriminatory. It failed to obtain that order. It also sought a condemnation of \$10,000 in moral damages and \$10,000 in punitive damages. The Tribunal held that taking account of **"morbid obesity", which is a perceived disability, the clinic, as an agent of the company, engaged the employer's liability.** For that reason, the Tribunal condemned Bathium to pay the candidate an amount of \$2,000 in moral damages, since, in its view, there had been a lack of vigilance in awarding the contract for services to its alternate service provider that disclosed the content of the desired medical examination. The Tribunal, however, dismissed all the other remedies applied for by the Commission.

**To sum up, this decision confirms that in Québec an employer may collect only the medical information considered to be relevant and necessary for the purposes of the position concerned and that the request to undergo a pre-hiring medical examination need not be conditional upon any prior offer of employment. Québec employers may**

therefore require a candidate to be examined to obtain an expert medical report confirming his or her physical capacity to do the job properly.

<sup>1</sup> 2015 QCTDP 13.

Expertise

[Labour & Employment](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.