

Brief Summary of Facts

On April 15, 2008, the decision in *Heintz v. Christian Horizons (CH)* was released by the Human Rights Tribunal of Ontario. Christian Horizons (CH) is a large Christian organization providing residential and other services to individuals who have developmental and physical handicaps. Ms. Connie Heintz was a CH employee from 1995 until she resigned in 2000. During this time, CH required its employees to affirm the organization's Statement of Faith and abide by its Lifestyle and Morality Statement. By way of background, this statement was developed in order to comply with the 1992 Ontario Human Rights decision in *Parks v. Christian Horizons*.

In 2001, Ms. Heintz filed a human rights complaint arguing that the Lifestyle and Morality statement, and in particular the prohibition of same-sex relationships, violated the Ontario Human Rights Code (Code). All attempts by CH to settle this matter were rejected by the Human Rights Commission, including the two amicable settlements reached between Ms. Heintz and CH. This resulted in a lengthy trial of 40 days involving the testimony of 21 witnesses.

Under Special Employment, Section 24 (1) (a) of the Ontario Human Rights Code says the following: "The right under section 5 to equal treatment with respect to employment is not infringed where, (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment;...".

The Chair acknowledged that CH was a religious organization but decided that the applicable exception did not apply to CH. CH pointed out that it had already established that it qualified for the exception in the *Parks* case, where the Tribunal had accepted that CH had two primary interests. It served primarily the interests of persons who self-identified as Evangelical Christians who had an interest in providing care and support to individuals with disabilities, and it served individuals with disabilities.

The Adjudicator of the Ontario Human Rights Tribunal, Michael Gotteil, decided that CH could not primarily serve two sets of interests. He rejected that CH was primarily serving the interests of Christians working together with common purpose and decided that CH was only serving the interests of individuals with disabilities without consideration of that individual's creed. Since CH had chosen not to restrict its services to "co-religionists", and to do "works of charity and mercy in the broader community", it did not qualify for the exception.

Consequently, he concluded it discriminated by requiring employees to sign and conform to the Lifestyle and Morality statement. Contrary to the focus of media, the Adjudicator stated in the decision that CH's public funding was not a relevant fact in making his decision. The Adjudicator further stated that even if he had decided that CH primarily served Christians, CH would still not qualify for the exception. He concluded that restricting employment to individuals similarly identified by creed (and in this case those who adhered to the Lifestyle and Morality Statement) was not, objectively speaking, a reasonable and bona fide qualification. He went on to state that CH had not provided an environment free from harassment and discrimination since it had offered Ms. Heintz the opportunity to attend Christian pastoral counselling for the purpose of spiritual restoration which he deemed to be "profoundly disrespectful and oppressive", and had created or permitted a poisoned work environment, and had acted on discriminatory views in matters of human resources.

In summary, the Adjudicator made the following orders:

- 1) CH must pay Connie Heintz \$8,000 general damages for the 'serious and harmful' discrimination resulting from the imposition of the Lifestyle and Morality Statement, pay her \$10,000 relating to a poisoned work environment and \$5,000 for the related wilful and reckless infliction of mental anguish;
- 2) CH must develop and adopt an anti-discrimination and anti-harassment policy and provide human rights training for all employees and managers;
- 3) CH must stop using the Lifestyle and Morality Statement as a condition of employment;
- 4) CH must review its employment policies, in consultation with the commission;
- 5) CH must submit a report of its plans to ensure employment policies comply with the Code. It must submit the report to the Tribunal, as well as Ms. Heintz and the Commission who are permitted to make submissions with respect to the report.

Concerns with the Decision

There is concern that the Code and a large body of existing case-law were applied very narrowly and incorrectly. Consider that if the decision is left unchallenged, potentially:

- a Christian charity that is engaged in evangelizing those who are not members of the sponsoring church would not be permitted to restrict hiring to believers;
- a Christian charity that serves the broader community would be seen as not primarily serving a Christian community and therefore not be able to impose faith-based requirements on employment, including use of a Lifestyle and Morality Statement;
- holding to values similar to the CH Lifestyle and Morality Statement could mean a charity "runs a serious risk of being a poisoned work environment";
- an offer of Christian pastoral counselling could violate the Code and contribute to a poisoned work environment;
- a Christian charity could be forced to amend all its human resource policies in consultation with a human rights Commission;
- the decision negatively affects freedom of religion in that it strictly curtails the ability of religious groups to define themselves; and
- the decision negatively affects freedom of association in that it limits the freedom of religious groups to have their members associate freely with each other without challenge from others not affiliated with the group.

The full 92 page decision of the Ontario Human Rights Tribunal is available at:
<http://www.canlii.org/en/on/onhrt/doc/2008/2008hrto22/2008hrto22.html>.

What Does this Decision Mean for Charities Right now?

Questions have been asked about the need to change human resource policies in light of *Heintz v. Christian Horizons*. At this time no change is required, although voluntary changes are of course always at the discretion of each organization. Until all legal appeals are exhausted, the Decision will be held in abeyance.

This means that since Christian Horizons is appealing the decision, it has no force nor effect until the decision to the final appeal (potentially the Supreme Court of Canada) has been rendered.

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