

ONTARIO PRIVATE MEMBER'S BILL PROPOSES BROADENED HUMAN RIGHTS CODE

Posted on October 19, 2017

Categories: [Insights](#), [Publications](#)

A Liberal Member of Provincial Parliament (MPP), Nathalie Des Rosiers of Ottawa, has put forward a Private Member's Bill that would substantially add to the grounds of discrimination prohibited under the *Ontario Human Rights Code*.

Bill 164, titled the *Human Rights Code Amendment Act, 2017*, would add four new prohibited grounds for discrimination: immigration status, genetic characteristics, police records, and social conditions^[1]. The Bill passed first reading on October 4, 2017 and will be tabled for second reading on October 26, 2017. Substantial debate on the merits of a Bill occurs at second reading and, subsequently, at the Committee stage (where amendments are often proposed).

Statements made in support of Bill 164 have largely focused on the potential new prohibited ground of "genetic characteristics". If Bill 164 becomes law, Ontario would be the first province to prohibit discrimination on that ground. The federal government passed its own *Genetic Non-Discrimination Act*, passed earlier this year.

However, the proposed prohibited ground that could lead to the greatest number of challenges under the *Code* is that of "social condition". Bill 164 defines "social condition" broader to refer to any social or economic disadvantage resulting from: (a) employment status, (b) source or level of income, (c) housing status, including homelessness, (d) level of education, or (e) any other similar circumstance^[2]. This broad definition does not contain any express exemptions and differs from those used for similar terms in other provinces. In Manitoba, "social disadvantage" allows for some discrimination, provided that the discrimination is not based on a negative bias or stereotype related to a specific social disadvantage^[3]. Similarly, in New Brunswick, some discrimination is permissible if it is required or authorized by an Act of the legislature^[4].

If Bill 164 passes in its current form, employers will need to be even more diligent in taking actions that could lead to an application under the *Code*, including hiring and termination. It remains, however, possible that the Bill will be altered at Committee, including by tailoring its language to more closely mirror similar terms used in other provinces.

We will continue to monitor Bill 164 and will provide updates as it moves through the legislature.

by Kyle M. Lambert and Bob Bell, Articled Student

[1] Bill 164, *Human Rights Code Amendment Act, 2017*, 2nd Sess, 41st Leg, Ontario, 2017, cl 1 (first reading October 4, 2017) [Bill 164].^[ps2id id='1' target='']

[2] Bill 164, cl 6(1).^[ps2id id='2' target='']

[3] *The Human Rights Code*, CCSM, c H175, s 9(2.1).^[ps2id id='3' target='']

[4] *Human Rights Act*, RSNB 2011, c 171, s 2.2.^[ps2id id='4' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2017