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Helpful Legal Information for MAHCP Members

Where Can You Exercise Your Human Rights?

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One of the things we are all aware of in a Democratic society is our rights. We have due process rights so that we can't be arrested, charged or convicted for an act without being given a fair opportunity to defend ourselves. As union members we have collective agreements that provide us with certain rights in the conduct of our employment. What about our Human Rights? How do we access our Human rights in the workplace in Manitoba? This article will discuss the various legal forums for an employee to exercise their human rights.

Not every act of violence or negligence against an employee is a violation of her human rights. The Human Rights Code provides that every person in Manitoba has the right not be discriminated against for certain listed characteristics.

These characteristics are:

- (a) ancestry, including colour and perceived race;
- (b) nationality or national origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;
- (f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender-determined characteristics or circumstances other than those included in clause (f);
- (h) sexual orientation;
- (i) marital or family status;
- (j) source of income;
- (k) political belief, political association or political activity;
- (l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

Unless the violation of your rights relates to one of these characteristics, it is not a human rights issue. Once you have determined that the basis for the violation is discrimination for a listed characteristic where can you register

your complaint? In Court, through a grievance process? or at the Human Rights Commission?

Recently a non-unionized employee in Manitoba brought an action in Court against her employer for a violation of her human rights. In that case the employee had an eye condition that impaired her vision. This qualifies as a characteristic under the Code at (l).

When the employee in this case was diagnosed with a permanent disability, the employer terminated her employment. The employer claimed the termination was as a result of a corporate restructuring. Since there was no union to represent her interest, the employee was not able to grieve the dismissal and violation of human rights. The employee first made a complaint to the Human Rights Commission and an investigation was commenced. Not satisfied with this, and also feeling that the Commission was limited in what it could award as a remedy, the employee also filed a law suit through the Court of Queen's Bench claiming wrongful dismissal and violation of human rights.



The employer brought a motion to have the employee's claim struck because it was already being dealt with by the commission. The Court had to determine whether it could hear a law suit that that incorporated a human rights violation as part of its claim. The court determined that it would be a limit to an employee's rights if they could not sue for wrongful dismissal for violation of human rights. The Court said that "a significant consideration is the fact that a complaint brought under the Code is controlled by the Commission, not the complainant." The Court made note of the fact that in its process, the Commission determines: "Whether a complaint will be accepted, the nature and pace of the investigation, whether the matter will proceed to a hearing before an adjudicator, and conduct

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of the hearing”. A law suit affords an employee with a greater variety of remedies and potentially greater amounts of money in damage for violation of their human rights and for wrongful dismissal.

The Court refused to strike the employee’s claim in this case, confirming that an employee can bring an action against an employer for wrongful dismissal thereby committing a violation of her human rights. The Court did however, stay the law suit pending the results of the Human Rights Commission’s investigation. The Court won’t allow an employee to have two actions proceeding against an employer one through the Court process and the other through the Commission at the same time regarding the same issue.

The situation is quite different in a unionized workplace. In a recent arbitration the employee filed a grievance and made a complaint to the Human Rights Commission at the same time. The employer did not argue that the arbitrator did not have the jurisdiction to decide a human rights complaint. It is accepted that an arbitrator does have that jurisdiction. The employer argued instead that the employee was not entitled to bring two actions against it concurrently. It argued that the grievance with respect to the human rights violation should be stayed pending the investigation and adjudication process by the Commission.

The arbitrator determined that he had concurrent jurisdiction to hear the matter and allowed the arbitration to proceed without consideration as to the continuing action of the Human Rights Commission.

Where an employee in a unionized or non-unionized workplace feels they have had their human rights violated they don’t have to resort to court or the grievance process. They can simply call the Manitoba Human Rights commission and make a complaint and allow the Commission to investigate and determine the issue on their behalf.

Human rights are integral in a free and democratic society. The Human Rights Code is not perfect in addressing all violations as human

rights violations. Where there is a violation, the avenues to address the investigation is threefold, through the Commission itself, through the grievance process in unionized shops and through the Courts in non-union shops.

Choosing the Attorney

As you know, Inkster Christie Hughes LLP offers a legal assistance program to the members of MAHCP. Under this plan you receive reduced rates on a number of specific legal matters such as the purchase or sale of a home, Wills, Powers of Attorney, Health Care Directives, separation agreements, divorces as well as a reduction on general legal rates.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Wendy at 772-0425.

MAHCP LEGAL ASSISTANCE PLAN

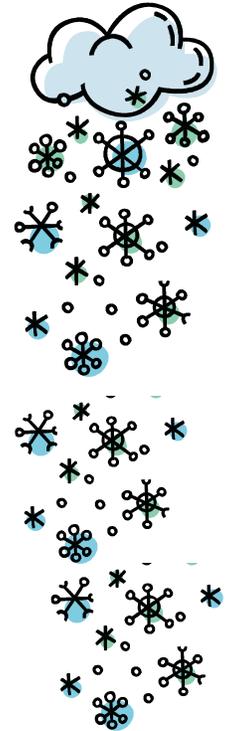
Membership does have its privileges

MAHCP members receive reduced legal fees on house purchases, sales and mortgages as well as Wills, Powers of Attorney and Health Care Directives under the MAHCP Legal Assistance Plan.

Discounts also apply to family law matters and members benefit from a 20% reduction in other legal fees.

For more information, please contact:

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“The most powerful tool we have for changing our environment is our ability to change ourselves.”

Stephanie Matthews-Simonton