Recruitment: Why you need to prepare your interview questions?

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During a job interview, an employer cannot ask questions that involve grounds for discrimination prohibited under the *Charter of Human Rights and Freedoms*[1] (the "Charter"), including the religion, marital status, or ethnic or national origin of a candidate.

Simply asking such questions could result in a violation of the Charter and, for a claim for damages to be disallowed, the employer would be required to prove that the information sought was necessary to determine if the candidate had the aptitudes or qualifications required for the position to be filled.[2]

Learning from the judgments rendered by the Human Rights Tribunal

In 2018, the Human Rights Tribunal ("HRT") rendered three decisions that set out principles for employers to consider when hiring.

The HRT ruled on complaints filed following recruitment processes in which questions were asked about a candidate's accent or the ethnic origin of a candidate's name. The latter was not subsequently selected as a candidate. The plaintiff claimed that he was discriminated against based on his ethnic or national origin.

The HRT pointed out that section 18.1 of the Charter is aimed at eradicating discrimination in hiring by prohibiting questions about personal characteristics that do not relate to the candidate's qualifications or abilities.

The employers admitted to asking about the plaintiff's ethnic origin, but stated that the question fell within a specific context:

> In order to discern if the ethnic origin of the plaintiff corresponded to one of the countries in which the business's partners were located, so as to justify the question as relating to the employment requirements.
> During an informal conversation that took place before the interview.
> Out of curiosity, and to understand why the candidate addressed the employer's representatives in familiar French.

The HRT rejected these arguments and emphasized that no matter the reason behind the question or the manner in which it was formulated, it remains that the question, asked during the job interview, was aimed at learning a personal characteristic of the candidate as it related to his origin, which is prohibited by the Charter.

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In its decisions, the HRT also reiterated the following points:

> Informal conversations that take place before or after a formal interview are part of the steps in a hiring process, and, therefore, they fall under the protections of the *Charter of Human Rights and Freedoms*.
> If a question is asked about a candidate's ethnic origin, the employer must be able to demonstrate that the answers sought relate to the qualifications or abilities required for the job.

Approach to be taken by employers

1. Prepare an interview plan and follow it

These decisions confirm that it is very important to be well prepared for the hiring process and to pre-establish an interview plan that clearly defines the employment requirements, so as to ensure that you only ask questions that directly relate to such requirements.

2. Avoid improvised questions

On the basis of the HRT decisions, questions asked “just out of curiosity,” off the cuff, that are more interpersonal in nature, or are meant to lighten the mood must be excluded, especially if such questions establish a direct or indirect connection to any of the grounds for discrimination prohibited by section 10 of the Charter.

3. Require the same vigilance from external consultants and in written communications

This planning must also include and regulate the content of email exchanges, text messages, and pre-interviews based on new methods of communication or pre-selection, by both the employer and its external consultants, given that the HRT emphasized that the guiding principles of the Charter can also be applied with the necessary adaptations in the digital era.

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1. CQLR, c. C-12, ss. 10 and 18.1.
2. Section 20 of the Charter.

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