

## Valid safety concern or transphobia? Quebec Human Rights Tribunal weighs in

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**'People might be resistant to this kind of change, but this is a change that needs to be done': lawyer on employer's 'safety concerns' hiring trans employee**



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When hiring trans and non-binary employees, concerns about safety or the reactions of clients or customers may be a common challenge that employers face – but they aren't justification for discriminatory practices, as a recent Quebec Human Rights Tribunal (HRT) decision has made clear.

The decision involved a trans woman who was denied a job as a server at a Montreal bar; after completing a successful training session and receiving an informal job offer from a supervisor, the bar manager retracted the offer when he learned of her gender identity.

Although the supervisor had commended the woman's performance during the training session, and recommended her for hire, the bar manager cited safety concerns, telling the applicant (in French): "The client base is old-fashioned, I don't want to have to defend you every day," according to the HRT decision.

The tribunal ruled this was discriminatory and awarded the employee \$12,000 in damages: \$2,000 each in punitive damages from the employer and the bar manager, and \$10,000 in moral damages.

# Safety concerns for trans or non-binary employees does not excuse discrimination

The tribunal emphasized that potential safety concerns do not excuse discrimination. Daphnée Legault, employment lawyer at Fasken in Montreal, explains that employers [must take a proactive approach](#); they cannot exclude someone based on hypothetical risks and must address any real safety concerns through proper planning.

“This should never come into play, whether or not you're hiring a person,” she says.

“This has been established since 1992 by the Supreme Court, where economic or clientele reasons are never good justifications to put aside some human rights or treat a person differently. So, the risk that your clientele might not be happy, or you might even lose some clients, or that it will create problems with other employees in the workplace, in theory, cannot be considered at all behind the reasoning of whether or not you're hiring the person.”

Legault admits that this challenge will still be real for employers who are navigating this process, and may not feel ready to take on trans or non-binary employees without friction from staff or clients.

But waiting for a [non-binary or trans applicant](#) to come through the door is waiting too long, she says.

“Since the legislators in every province decided that we need to tackle stigma and discrimination against trans people or non-binary people, work will have to be done,” she says. “And there will be a period of time where it will be deeply uncomfortable, and we will have to change our ways of doing and it will maybe irritate some people, or some people might be resistant to this kind of change, but this is a change that needs to be done.”

## Balancing client reactions with legal obligations

[In the Quebec HRT case](#), the employer’s reasoning for not hiring the employee was partly based on fears that the clientele might not accept a trans worker. The decision outlined how the applicant had completed her transition and sex-reassignment surgery and was a woman; when she gave this information to the bar manager, he immediately said he could not hire her because “it shows a little bit in your voice [translation].”

The claimant told the HRT that this led to an “obsession” with her voice, causing her to pursue two more vocal chord surgeries in the U.S.

If there are concerns about how clients might react, it’s the employer’s responsibility to establish clear boundaries, Legault says. This is done by communicating about policies around discrimination and respect in the workplace, and ensuring that these policies are front and centre, helping clients to understand their role in fostering a respectful work environment.

“With clients, it's the most difficult part, I believe, to establish some kind of strategy, establish which clients might be more problematic or resistant to this change, discussing how can we manage the situation with this client, what this client might be receptive to,” she says.

“It's extremely uncomfortable to do. I do realize that, especially when it touches the clients, but I believe that there is no choice in this. This has to be done. And if all employers do this, then eventually it'll become less problematic and [easier] to do. But I believe there's no way to get around it.”

## Responding to discrimination claims: act quickly

Jenson Leung, employment lawyer at KSW Lawyers in Vancouver, echoes this sentiment, noting that concerns about client reactions would not hold up in court.

"In [B.C., the result would be](#) similar," he says, adding that there would need to be specific threats or safety concerns before an employer could claim any valid reason for not hiring a trans or non-binary worker.

“Depending on the severity of those threats, it may get to a point where there does begin to be some type of undue hardship-type analysis. But, overall, it's unlikely that transphobia is going to be considered a valid reason to deny a trans person a role,” Leung says.

When faced with discrimination claims, the worst thing an employer can do is ignore the situation, he says. In the Montreal case, the employer did not respond to the complaint or attend the hearing, which only worsened the outcome for them as the HRT decision was ultimately made based entirely on evidence from the claimant.

Leung advises employers to take immediate action if a complaint arises: “Talk to a lawyer ASAP if something does blow up.”

Ignoring the issue can lead to more significant problems and potential financial consequences, he says.

"The employer decided to essentially bury their heads in the sand, and that's almost never the right approach.”

## Being proactive by building inclusive workplace

Establishing an inclusive workplace goes beyond hiring; it requires preparation and education. Employers must ensure that their teams are ready to welcome all employees, including trans and non-binary individuals, before the new hire starts and ideally before a job is even posted.

Planning for potential challenges, such as educating staff and setting clear policies on respect, can help smooth the transition. When a trans or non-binary employee starts work, the employer should already have policies and accommodations in place to ensure that the new hire's experience is positive.

“You should start thinking about, ‘Okay, essentially, how can I make this workplace safe and positive for this person?’ So, if it comes with policies, if it comes with education, if it comes to special accommodations, that needs to be considered right away,” Legault says. “When the employee comes into work, you are ready to implement this, and there is no period where it's extremely uncomfortable and things could happen that were not planned beforehand.”

# Respect, sensitivity towards trans and non-binary employees

This education should be broad and not single out any individual, however; Legault advises that general training on discrimination, workplace conduct, and respect is the best approach.

“We can do general education without targeting specifically an employee and announcing that there will be a trans person coming into this workplace,” she says. This helps foster an environment where respect and inclusivity are the norm, not the exceptions.

Privacy is another important consideration. Employers should avoid unnecessary inquiries into an employee’s gender identity unless there’s a specific, work-related reason. This ensures that the focus remains on the employee’s qualifications and ability to perform the job, rather than personal details that may not be relevant, says Leung. “It should be left up to the employee to volunteer that information,” he says.

“I think for employers, it's less of a specific privacy thing, and more that they generally should consider having a degree of sensitivity training, and also just a reminder that unless there is a specific work-related reason why they need to be asking, generally speaking, people are entitled to keep their personal information private.”

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