

The Manitoba Highschool Athletic Association Inc. v. Manitoba Human Rights Commission and Pasternak and Pasternak

[COMPLETE DECISION PDF](#)

Summary:

The respondent appealed the Adjudicator's decision that it had discriminated against the complainants on the basis of sex, to the Manitoba Court of Queen's Bench.

The Court considered the appropriate standard for judicial review and determined that the single standard for judicial review of questions of fact, or of mixed fact and law, is "reasonableness". The standard of review for questions of law and jurisdiction is correctness.

The Court considered in particular, whether the Adjudicator had erred by not requiring the complainants to prove injury to dignity as an element of discrimination. It was found that the Adjudicator did not err and that it was not obligated to apply the 2 step, Law test set out by the Supreme Court of Canada in cases involving non-governmental actors. It noted that the Law test was developed in the Charter context and the Charter applies only to public actors. The Law test been applied in human rights complaints where government benefit schemes are involved, where arguably there is an overlap between Charter and statutory human rights protections, but has not been applied in complaints against private entities. The Court found that the Adjudicator had correctly focused on the differential treatment of the complainants and the adverse effects on them as a result of the respondent's actions, in determining that there was a prima facie case of discrimination. The Court did note, however, that even under the Law test, there was no error because the Adjudicator had applied a substantive equality approach, which focused on the judging the complainants on their personal merit rather than their gender. Further there was no error in finding that the respondent had failed to prove that being male was a bona fide qualification for participation on the team, which is a question of mixed fact and law. The Adjudicator's findings were determined to be based on reasonable assumptions and analysis and were also correct in the circumstances.

The Court upheld the Adjudicator's award of general damages and affirmed that the complainants be provided with coaching support and be allowed a session at hockey school to catch up on what they had missed during their period of exclusion. The Court noted that although it would not have made this order, there was a rational basis for the Adjudicator's decision.

The appeal was dismissed, with costs awarded to the Manitoba Human Rights Commission.