Unofficial English Translation of the Judgment of the Court

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| Commission des droits de la personne et des droits de la jeunesse (T.J.R.) c. Procureur général du Québec (Sûreté du Québec) | 2022 QCCA 1577 |
| COURT OF APPEAL |
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| CANADA |
| PROVINCE OF QUEBEC |
| REGISTRY OF |  MONTREAL |
| No.: | 500-09-029282-217 |
| (500-53-000483-188) |
|  |
| DATE: | November 22, 2022 |
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| CORAM: | THE HONOURABLE | GENEVIÈVE COTNAM, J.A.MICHEL BEAUPRÉ, J.A.PETER KALICHMAN, J.A. |
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| Commission des droits de la personne et des droits de la jeunesse, acting in the public interest and on behalf of T.J.R. |
| APPELLANT – applicant |
| v. |
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| ATTORNEY GENERAL OF QUEBEC (in right of the Sûreté du Québec) |
| RESPONDENT – defendant |
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| JUDGMENT |
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**NOTICE: On February 21, 2019, the Honourable Ann-Marie Jones, J.C.Q., made an order under s. 121 of the *Charter of Human Rights and Freedoms* that the complainant be identified by the initials T.J.R.**

1. The appellant, Commission des droits de la personne et des droits de la jeunesse (the “Commission”), acting in the public interest and on behalf of the complainant, appeals from a judgment rendered by the Tribunal des droits de la personne, District of Montreal (the Honourable Doris Thibault) (the “Tribunal”) on November 13, 2020, which partially dismissed his originating application and concluded that the refusal of the Sûreté du Québec (SQ) to hire the complainant was not discriminatory and that it was warranted by the false statements the complainant had made during the hiring process.[[1]](#footnote-1)
2. The appeal is dismissed for the reasons given below.

**BACKGROUND**

1. The facts are not in dispute.
2. The complainant is afflicted with Tourette Syndrome (“TS”), diagnosed when he was 7. The syndrome is characterized by rare vocal tics that are largely controlled and motor tics in the form of occasional eye blinking. He has none of the comorbidities frequently associated with the syndrome: attention deficit, compulsive behaviour, sleep or personality disorders, etc. The evidence also shows that he has never been treated for this condition.
3. After working for the Canadian Army and as a corrections officer, the complainant wanted to pursue a career as an SQ officer. He submitted his application and began the long, multi-step recruitment process.
4. The applicants start with an assessment day, during which they undergo four pre-selection tests: a personality test, a psychometric test, a situational judgment test, and a case study. If they pass them all, they then have to undergo physical and medical examinations preceded by a medical questionnaire drawn up by the Medisys clinic. They also have to answer questions in a pre-employment questionnaire. After that, an investigator conducts a security screening and an interview in which all the information provided by the applicants is reviewed. Upon recommendation of the SQ, and with the authorization of the Ministère de la Sécurité publique, applicants who get through all those steps will receive a promise of employment.
5. Employment is still subject to meeting the admission criteria, obtaining an Attestation of College Studies (ACS), and completing a 15-week internship at the École nationale de police (ÉNPQ). The promise of employment specifies that the SQ reserves its right to terminate the hiring process if, for example, [translation] “the [applicant’s] actions or the information brought to [their] attention establish, in the opinion of the Sûreté du Québec, that [the applicant] does not meet its employment criteria.”
6. On July 5, 2012, the complainant received a promise of employment from the SQ. At that point, he then left his job position as a corrections officer and started the courses. He successfully passed all the steps of the process and obtained his diploma from the ÉNPQ, with “distinction” attributed by his peers.
7. The SQ recruiter attended the ÉNPQ graduation ceremony on October 25, 2013, as usual. That was when he learned from informal discussions with the instructors that the applicant was afflicted with TS. The instructors said they noticed that he sometimes made unusual sounds but added that it did not affect his performance in any way.
8. After checking the complainant’s file, the SQ found that he had not mentioned the condition in the medical questionnaire or during two medical examinations at Medisys. Nor was it mentioned in the pre-employment questionnaire. The only allusion to his condition was in a reference letter sent by the Association québécoise du SGT (the “Association”), which said: [translation] “Mr. [T.J.R.] acts as a support resource with TS twice a year on average.”
9. The complainant’s file was then suspended pending an opinion from the SQ physician and a further security investigation aimed at establishing the reasons the said information had not been revealed during the hiring process.
10. On November 6, 2013, investigators met with the complainant and showed him the letter from the Association. He explained that he did not mention his TS because, in his opinion [translation] “it was over” and [translation] “taken care of.” He stated that he was in possession of letters from a neurologist confirming what he said. During the meeting, he added, on his own initiative, that he had also failed to disclose his consultations with a psychologist from 2004 to 2007 in relation to his unhealthy relationships with women. He specified that he had taken that step on his own initiative, that it was not related to any mental health program, and that the person he consulted was really a “life coach” rather than a psychologist.
11. The SQ informed the complainant that his file had been suspended. The investigation continued. The SQ physician concluded that, even though the complainant had failed to disclose his TS diagnosis and his consultations with a psychologist, he was still fit to work as a patrol officer. However, that information was not shared with the complainant.
12. Instead, the complainant was informed on September 18, 2014, that the SQ had decided to terminate the promise of employment because the trust relationship had broken down and he no longer met the ethical and good moral character criteria required to work as a patrol officer.
13. The complainant, whose dream of being a police officer crumbled, has never been able to enter any other police force since then. Instead, he has pursued a career in damage insurance.
14. On November 27, 2019, the Commission, acting in the public interest and on behalf of the complainant, filed a complaint with the Tribunal des droits de la personne.

**THE MEDICAL QUESTIONNAIRE AND THE PRE-EMPLOYMENT QUESTIONNAIRE**

1. For the purposes of our analysis, we will briefly review the questions in the medical questionnaire and the pre-employment questionnaire.
2. The pre-employment medical questionnaire is a template that Medisys uses to find out about the applicant’s medical history before the medical examination. It is not tailored specifically to the requirements of the SQ or the position of patrol officer. The complainant filled the form in twice, once on March 9, 2012, and a second time on July 26, 2013. The questions at issue at first instance were:

 [translation]

* Question 1: “Have you ever been hospitalized? If so, give details.”
* Question 2: “Have you ever been operated on? If so, give details.”
* Question 4: “Have you ever been in an automobile accident or have you ever been the victim of a criminal offence causing injuries? If so, give details.”
* Question 7: “Are you receiving or have you ever received a lump-sum payment following an illness or injury? If so, give details.”
* Question 8: “Have you ever been exposed, … at work or at recreation, to: repeated movements of your hands or elbows, high noise levels, asbestos, lead, mercury, cadmium or other metals, radioactive substances, vibrating tools, pesticides, herbicides, insecticides, scouring or sanding dust, textile drilling, coal, silica, grains, etc.…”
* Section 4- Systems review:

“Are you now or have you even been treated for any of the following illnesses? Tick the response and circle the illness, injury, or symptom and give details.

* Question 12: **Liver, pancreas, stomach, intestines**: e.g., hepatitis, jaundice, ulcers, hernias, colitis, gallstones, hemorrhoids, chronic diarrhea, constipation? If so, give details.
* Question 18: **Nervous system disorders**:

a) Convulsions, vertigo, epilepsy, paralysis, severe headaches, loss of consciousness? If so, give details.

b) Insomnia, anxiety, depression, burnout, memory loss, diverse emotional problems, dependence on drugs/alcohol, etc.? If so, give details.[[2]](#footnote-2)

* Question 21: **skin diseases**: psoriasis, eczema, hives, dry skin, warts, etc.? If so, give details.
* Question 25: any other health problem not listed above? If so, give details.”

[Emphasis added.]

1. Only questions 18 and 25 are still relevant at the appeal stage.
2. The administrative investigation questionnaire or pre-employment questionnaire touches briefly on the applicant’s health, but also contains a set of questions aimed at obtaining family, academic, professional, social, and financial information. This questionnaire is filled in before the interview with the investigator.
3. The relevant questions at first instance were:

 [translation]

* 7.5: “Have you suffered from depression, anxiety, panic disorders, behavioural disorders, phobias, or other mental illness? Describe the circumstances.”
* 7.6: “Have you ever consulted any of the following mental health professionals: psychiatrist, psychologist, other(s) (specify)? If so, describe the circumstances.”
* 7.7: “Have you ever been hospitalized, undergone an operation, or had an injury requiring hospital care?”

[Emphasis added.]

1. Only questions 7.5 and 7.6 are relevant to this appeal.
2. In addition, at the end of the pre-employment questionnaire, the complainant declared:

 [translation]

I certify that the information provided in the *Administrative-Pre-employment Questionnaire for a Police Applicant* (214-536) and the *Police Officer Offer of Services* (214-350) is complete and true, knowing that a false declaration may lead to my application being refused or my dismissal, as the case may be.

[Emphasis added.]

**THE JUDGMENT UNDER APPEAL**

1. After correctly listing the applicable legal principles, the Tribunal pointed out that the employment questionnaires may violate the right to privacy and dignity. It added that pre-employment medical examinations are also likely to infringe on an applicant’s right to physical integrity.
2. To address the legal issues, the Tribunal determined which qualities and aptitudes were required to be an SQ police officer. It found that applicants must at least meet the requirements of s. 115 of the *Police Act.*[[3]](#footnote-3) They must therefore (1) be Canadian citizens, (2) be of good moral character, (3) not have been found guilty of an act or omission defined in the *Criminal Code* as an offence, or of an offence referred to in section 183 of that Code under one of the Acts listed therein, (4) hold a diploma awarded by the École national de police du Québec or meet standards of equivalence. According to the evidence, applicants also have to be physically, psychologically, and emotionally stable, given the safety issues, stress, and violence that police officers are confronted with daily.
3. Analyzing the medical questionnaire, the Tribunal concluded that some questions cast too wide a net and contravened s. 18.1 of the Quebec *Charter of human rights and freedoms* (the“*Charter*”).[[4]](#footnote-4) Questions 1, 2, 4, 7, and 25 were deemed irrelevant for the purposes of assessing the applicant’s state of health.[[5]](#footnote-5) The Tribunal did find, however, that the information sought in questions 12, 18, and 21 was [translation] “directly connected to the aptitudes or qualities required.”[[6]](#footnote-6)
4. The Tribunal felt that questions 7.5 and 7.6 of the pre-employment questionnaire were not discriminatory since the employer was warranted in asking questions about the mental health of applicants.[[7]](#footnote-7) It added that the complainant should have said he was afflicted with TS in response to question 7.5.[[8]](#footnote-8)Question 7.7, however, was too broad and contravened the *Charter.*[[9]](#footnote-9)
5. Last, the Tribunal decided that the lung X-ray and the genital palpation the complainant underwent during the medical examinations violated his physical integrity.
6. As compensation for these violations, the Tribunal ordered the SQ to pay the complainant an indemnity of $8,000 in moral damages. It dismissed the conclusions seeking punitive damages due to the [translation] “lack of intentionality of the actions.”[[10]](#footnote-10) It ordered the SQ to rewrite its medical and pre-employment questionnaires to make them comply with the *Charter*.
7. The Tribunal refused, however, to find the refusal of employment discriminatory; according to the evidence, it [translation] “was not discriminatory because the decision was based on the qualities essential to the function of a police officer, namely, good moral character and integrity, not the fact that he was afflicted with TS.”[[11]](#footnote-11) This appeal turns on that conclusion.

**GROUNDS OF APPEAL**

1. The appellant submits the following three grounds:
2. Did the Tribunal err in applying the two steps of the legal framework of the defence of justification partially and incompletely and in concluding that the complainant had made false declarations about his health?
3. Was the refusal to hire the complainant discriminatory?
4. Does the complainant have the right to be hired and is he entitled to the damages claimed by the Commission on his behalf?

**THE STANDARD OF REVIEW**

1. The standard of review for a decision of the Tribunal des droits de la personne et des droits de la jeunesse is now clear. In *Ward v. Québec (Commission des droits de la personne et des droits de la jeunesse),*[[12]](#footnote-12) the Supreme Court noted:

[24] …. According to *Vavilov*, the presumption that reasonableness is the applicable standard of review for an administrative decision will be rebutted where the legislature has provided for “a statutory appeal mechanism from an administrative decision maker to a court, thereby signalling the application of appellate standards” (para. 33).

[25] Here, ss. 132 and 133 of the *Quebec Charter* state that the Tribunal’s decisions may be appealed to the Quebec Court of Appeal. Because there is a statutory appeal mechanism, appellate standards apply rather than the reasonableness standard (*Vavilov*, at para. 37; see *Housen* v. *Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235). The applicable standard is correctness for questions of law and palpable and overriding error for questions of mixed fact and law.[[13]](#footnote-13)

**ANALYSIS**

1. The appellant argues that the refusal of employment was unwarranted and that the complainant’s false declarations were irrelevant because they referred to questions the employer had no right to ask since they were discriminatory.
2. The appellant adds that the same argument also applies when the questions are not clear and precise, since such questions cannot comply with the *Charter*. The appellant therefore acknowledges that the employer was entitled to ask whether the complainant was afflicted with TS, but could only do so by asking precise questions. If it did not, the Tribunal could not conclude that such information was relevant for the employer.
3. The appellant also argues that the Tribunal erred in considering questions relating to mental health to be relevant.[[14]](#footnote-14) In the appellant’s view, the fact that the complainant consulted a psychologist about his relationships with women was not relevant for employment purposes. The questions were too broad, which made them discriminatory.
4. The appellant suggests that the reason provided for the dismissal was a pretext. It contends that the SQ withdrew its offer of employment for discriminatory reasons connected to the complainant’s health, since the SQ’s disability plan is so generous that it only wants to hire applicants who are in good health.

\* \* \* \* \*

**1- Did the Tribunal err in concluding that the complainant made false declarations about his health?**

1. The *Charter*[[15]](#footnote-15) makes a clear distinction between the discriminatory collecting of information[[16]](#footnote-16) and discriminatory use made of collected information.[[17]](#footnote-17)
2. The information sought through a medical questionnaire bears on the applicant’s state of health; as such it touches on one of the grounds of discrimination listed in s. 10 of the *Charter*, i.e. handicap.[[18]](#footnote-18) The fact that applicants have to answer such questions as part of the hiring process is a *prima facie* violation, regardless of the subsequent use to be made of such information.[[19]](#footnote-19)
3. As part of the employment process, the employer is entitled to make sure applicants possess the aptitudes and qualities required to perform the duties they will be assigned in safety, both for themselves and for others.[[20]](#footnote-20) The employer must therefore show, on a balance of probabilities, that the information it seeks is for that specific purpose alone.[[21]](#footnote-21) The questionnaire must be tailored to the duties to be performed and cannot be designed solely to hire healthy applicants who will be at a lower risk for absenteeism.[[22]](#footnote-22)
4. With regard to a pre-employment questionnaire, the employer must show that [translation] “the information is sought for a purpose rationally connected to the performance of the job in question and is reasonably necessary for achieving that legitimate, work-related goal”.[[23]](#footnote-23)
5. The Tribunal concluded that this proof had been made. The SQ had demonstrated that, over and above the requirements of s. 115 of the *Police Act*, the aptitudes and qualities required to be a police officer justify obtaining information relating to the applicant’s neurological conditions and mental health.
6. The SQ’s medical expert testified as to the essential aptitudes required to work as a police officer:
* Using a firearm: involves psychological stability and physical skills; requires pathology-free hands;
* Driving a vehicle in emergency or priority mode: requires an ability to control impulses and anger, as well as driving skills; the person must have good vision;
* Using force to subdue an individual: requires judgement, emotional stability, knowledge of techniques, and use of all four limbs; using these techniques may expose officers to sprains, dislocations, concussions, and fractures;
* Working shifts on rotation (days, evenings and nights); this atypical schedule is not compatible with people who have sleep disorders or who are emotionally fragile; she added that all psychological disorders are very sensitive to disrupted sleep cycles.[[24]](#footnote-24)
1. She stated that the medical questions are simple and are aimed at informing the examining physician. They are not time bound because some medical problems can recur.[[25]](#footnote-25) She added that the questions related to mental health are very relevant because police officers are [translation] “exposed to above-average situations of violence and stress.”[[26]](#footnote-26)
2. The appellant’s expert also acknowledged the importance of assessing applicants’ mental states in a context where safety issues are paramount.[[27]](#footnote-27)
3. The Tribunal found that the employer had provided sufficient reasons for obtaining the required information.
4. The appeal therefore concerns the discriminatory nature of question 18 in the medical questionnaire and questions 7.5 and 7.6 of the pre-employment questionnaire, and consequently, on the applicant’s obligation to reveal the fact that he had TS and that he had consulted a psychologist in the past.
5. Did the complainant have to reveal the fact that he had TS?
6. The Tribunal concluded that the information sought in question 18 of the medical questionnaire in relation to the nervous system was [translation] “directly and rationally connected to the aptitudes and qualities required” for the work of police officers.
7. The appellant has not convinced us that the above conclusion, which is based on the evidence, was tainted by error of any kind.
8. It is true that the question does not refer directly to TS or to symptoms related to that condition, such as verbal or motor tics. It is hard to strike a balance on this issue. If the question is too broad, it risks being found discriminatory, but if it is too specific, the employer may miss out on information that is relevant and necessary for hiring purposes.
9. Question 18 of the medical questionnaire is simple and clear enough for all applicants to understand what kind of information they have to provide. The list of some neurological conditions and symptoms is not exhaustive, as appears from the use of “etc…” It would be unreasonable, despite what the appellant suggests, to require the questionnaire to list all neurological diseases or every potential relevant symptom.
10. The complainant knows that he suffers from a neurological condition and that it had been a source of concern in previous job searches.
11. In fact, his TS diagnosis had initially prevented him from joining the Canadian Armed Forces in 2000. That refusal led him to consult a neurologist, who concluded that, apart from rare vocal tics and occasional eye blinks, the examination displayed nothing abnormal. The army then agreed to review its position and the complainant worked there until 2010.
12. He made approaches to the RCMP from 2008 to 2010. The complainant considered it necessary to consult the same neurologist again, who confirmed that his condition did not prevent him from working as a police officer.
13. The fact that it is hard to classify TS as a neurological disorder or a mental health problem, or that the complainant thinks he is cured, despite having a few subtle verbal and motor tics, does not release him from his obligation of transparency and good faith. He knows his condition, and it is not up to him to determine what a potential employer will find important or not.
14. As this Court has stated:

[translation]

[85] Some people fear how the employer could use that information. Applicants who fill in a pre-employment questionnaire have full latitude to nuance and hone their responses, with supporting documentation. The employers who receive their questionnaires must assess and characterize them and, after doing so, may deny an application from a person afflicted with a handicap only if the decision to do so is based on the aptitudes or qualities required by the sought-after job at the relevant time. They also have a duty to accommodate, subject to undue hardship.

[86] This important exercise could not be carried out in this case, because the employee made a deliberate choice not to respond in the utmost good faith to the employer’s questionnaire.[[28]](#footnote-28)

1. Even if we were to conclude, as the appellant urges us to do, that there was no specific question obliging the complainant to disclose his TS, the form did include question 25, which asked the applicant to provide details of any state of health not specifically covered by the previous questions.
2. The Tribunal concluded that this question was too broad and discriminatory. That finding no doubt justified a remedial order under the *Charter* obliging the employer to amend the question and make it compliant with the requirements of the *Charter*. The discriminatory nature of that question does not, however, release the complainant from his obligation to disclose a medical condition which, to his knowledge, could likely be of concern to a future employer. He could have answered and added all the nuances he thought proper, providing a copy of the report from the neurologist he had consulted in the past. The subject could then have been discussed during the medical examination and specifically analyzed by the employer’s physician.
3. This Court’s analysis supports the Tribunal’s approach:

 [translation]

[76] The main thrust of the Union’s argument is that the questions that were asked did not cover a specific time period and that the evidence did not establish the need for such an invasion of privacy. It would not be reasonable to research all the aspects of the worker’s medical file. Consequently, the employee should not be punished for having lied. A false or inaccurate answer to a discriminatory question should not, in the Union’s opinion, lead to a break in the employment relationship.

[77] The questionnaire casts a wide net and it does not seem to have been designed to obtain medical information related only to the aptitudes or qualities required by the nursing profession. Some remedies could no doubt have been sought under the *Charter*. That is not to say, however, that since certain questions should not have been asked, the employee’s false declarations bearing on information the employer was entitled to know in order to assume its responsibilities and make the best decision about hiring in the circumstances could not be set up against him.

[78] I do not follow the school of thought that would find that the applicant is released from his obligation of good faith and transparency in such a specific case. He cannot hide information that might be prejudicial to him to be on the safe side, and then claim, if the subterfuge is eventually discovered, that some of the questions were potentially discriminatory. .

[79] I agree that a false declaration may not be determinative if the omission concerns an element the employer would not be entitled to consider under s. 18.1 of the *Charter* or an insignificant element that did not determine the issue of consent. But that is not the case here.[[29]](#footnote-29)

[Our emphasis]

1. The same line of reasoning applies here. The complainant should have declared that he had TS.

ii- The complainant made false declarations about his consultations with a psychologist

1. The Tribunal concluded that the employer was justified in asking questions relating to the applicant’s mental health due to the demands of police work.[[30]](#footnote-30) That conclusion was supported by the evidence.
2. In actual fact, the complainant did answer the questions he was asked, but he merely stated that he had benefitted from psychological follow-up offered through the funeral parlour when his mother died. He never mentioned his consultations having to do with his difficult relationships with women. He did not disclose that subject until the additional administrative investigation after the graduation ceremony. And even on that occasion, the information he provided was inaccurate. He said he had consulted a “life coach” on his own initiative a few times while the investigation was still underway, and that he had consulted a psychologist sporadically, i.e. on 16 occasions, between 2004 and 2005. The investigation revealed that he had in fact had 48 such consultations between the end of November 2004 and June 2007.
3. The Tribunal’s conclusion that the complainant gave false declarations in response to questions 7.5 and 7.6 of the administrative investigation questionnaire was therefore well founded.

**2- Was the refusal of employment justified in the circumstances?**

1. The Tribunal correctly concluded that the complainant demonstrated a lack of transparency during the hiring process. There were several occasions when he could have disclosed the fact that he suffered from TS. He filled in the medical questionnaire twice, underwent two medical examinations during which the items mentioned in the questionnaire were addressed, and he filled in the questionnaire for the administrative investigation in addition to taking part in an interview. He chose not to mention it, even though he was aware that it might well be relevant to a potential employer. He also demonstrated reticence with regard to his consultations with a psychologist.
2. Once again in *Centre hospitalier régional de Trois-Rivières*, this Court noted that:

[translation]

[60] False declarations in the pre-employment medical questionnaire are often likened by arbitration tribunals to a lack of transparency that affectss the trust relationship between the worker and the employer, one which is vital to the ongoing employment relationship. Case law on arbitrations has established certain criteria for determining the conditions that would warrant dismissing a worker. They include: (1) the connection between the false declaration and the duties performed by the employee; (2) the fact that the employer would not have hired the employee if it had known the truth; (3) the deliberate nature of the false declaration.

[61] Just one of these items may suffice to justify dismissal. And even if an applicant is in good faith when declaring that he or she not have an illness that would prevent him from holding a position, the employer’s consent may be vitiated if it turns out not to be the case.[[31]](#footnote-31)

[Our emphasis]

1. Indeed, applicants are held to a duty of good faith[[32]](#footnote-32) toward their future employers when they take part in the hiring process.
2. The cancellation of the promise of employment is not connected to the complainant’s state of health. After completing its investigation, the SQ found that he was capable of performing the duties of a patrol officer despite his TS and the psychological problems he had sought help for. It was the deliberate omissions with regard to his state of health that prompted the employer’s decision. Those half-truths coming from a future police officer were of a kind to affect the relationship of trust with the employer and even with the public, especially when the notions of good moral character and integrity are core qualities required in applicants.
3. Given this conclusion, it is not necessary for the Court to rule on the application for rehiring and damages.

**FOR THESE REASONS, THE COURT:**

1. **DISMISSES** the appeal with costs.

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|  | GENEVIÈVE COTNAM, J.A. |
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|  | MICHEL BEAUPRÉ, J.A. |
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|  | PETER KALICHMAN, J.A. |
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| Mtre Stéphanie Fournier |
| Mtre Lysiane Clément-Major |
| BITZAKIDIS, CLÉMENT-MAJOR, FOURNIER |
| For the Appellant |
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| Mtre Charles Gravel  |
| Mtre François-Alexandre Gagné |
| BERNARD, ROY (JUSTICE-QUÉBEC) |
| For the Respondent |
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| Hearing date: | March 24, 2022 |

1. *Commission des droits de la personne et des droits de la jeunesse (T.J.R.) c. Procureur général du Québec (Sûreté du Québec)*, 2020 QCTDP 20 [judgment under appeal]. [↑](#footnote-ref-1)
2. Exhibit P-9, Pre-employment medical questionnaire or medical questionnaire from the first visit to the Medisys clinic, filled in by the complainant on or about March 9, 2012; A.F., confidential vol.at 191-192. [↑](#footnote-ref-2)
3. CQLR c. P-13.1. [↑](#footnote-ref-3)
4. The questions are numbers 1, 2, 3, 7, 8, and 25 of the medical questionnaire. See: Judgment under appeal at paras. 102–104 and 110. [↑](#footnote-ref-4)
5. Judgment under appeal at paras. 103 and 104. [↑](#footnote-ref-5)
6. Judgment under appeal at paras. 102 and 109. [↑](#footnote-ref-6)
7. Judgment under appeal at paras. 114 and 117. [↑](#footnote-ref-7)
8. Judgment under appeal at para. 115. [↑](#footnote-ref-8)
9. Judgment under appeal at para. 118. [↑](#footnote-ref-9)
10. Judgment under appeal at paras. 187–192. [↑](#footnote-ref-10)
11. Judgment under appeal at para. 156. [↑](#footnote-ref-11)
12. *Ward v. Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43. [↑](#footnote-ref-12)
13. *Ibid*. at paras. 24–25. [↑](#footnote-ref-13)
14. Medical questionnaire: questions 18 and 25; pre-employment questionnaire: questions 7.5 and 7.6. [↑](#footnote-ref-14)
15. *Charter of human rights and freedoms,* CQLR c. C-12 [the “*Charter*”]. [↑](#footnote-ref-15)
16. *Charter*, *supra* note. 15, s.18.1: “No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application.” [↑](#footnote-ref-16)
17. *Charter*, *supra* note 15, s.16: “No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.” [↑](#footnote-ref-17)
18. *Syndicat des infirmières, inhalothérapeutes, infirmières auxiliaires du Cœur du Québec (SIIIACQ) c. Centre hospitalier régional de Trois-Rivières,* 2012 QCCA 1867, leave to appeal to S.C.C. refused, 35130 (21 March 2013). [↑](#footnote-ref-18)
19. *Ibid.* at paras. 63 and 65. [↑](#footnote-ref-19)
20. *Charter*, *supra* note 15, s. 20; *Syndicat des infirmières, inhalothérapeutes, infirmières auxiliaires du Cœur du Québec (SIIIACQ) c. Centre hospitalier régional de Trois-Rivières, supra* note 18 at para. 67. [↑](#footnote-ref-20)
21. *Syndicat des infirmières, inhalothérapeutes, infirmières auxiliaires du Cœur du Québec (SIIIACQ) c. Centre hospitalier régional de Trois-Rivières, supra* note 18 at para. 67. [↑](#footnote-ref-21)
22. *Ibid.* at para. 58. [↑](#footnote-ref-22)
23. *Ibid.* at para. 68. [↑](#footnote-ref-23)
24. Judgment under appeal, para. 78. [↑](#footnote-ref-24)
25. Judgment under appeal, paras. 91-92. [↑](#footnote-ref-25)
26. Judgment under appeal, para. 79. [↑](#footnote-ref-26)
27. Judgment under appeal, para. 80. [↑](#footnote-ref-27)
28. *Syndicat des infirmières, inhalothérapeutes, infirmières auxiliaires du Cœur du Québec (SIIIACQ) c. Centre hospitalier régional de Trois-Rivières*, *supra* note 18 at paras. 85–86. [↑](#footnote-ref-28)
29. *Ibid*. at paras. 76–79. [↑](#footnote-ref-29)
30. Judgment under appeal, para. 114. [↑](#footnote-ref-30)
31. *Syndicat des infirmières, inhalothérapeutes, infirmières auxiliaires du Coeur du Québec (SIIIACQ) c. Centre hospitalier régional de Trois-Rivières*, *supra*, fn. 18, paras. 60-61. [↑](#footnote-ref-31)
32. Articles. 6, 7 and 1375 of the *Civil* *Code of Québec.* [↑](#footnote-ref-32)