**Translated from the original French**

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| Commission des droits de la personne et des droits de la jeunesse (E.B.) c. 9302-6573 Québec inc. (Bar Lucky 7) | | | | | | | 2024 QCTDP 9 | |
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| HUMAN RIGHTS TRIBUNAL | | | | | | | | |
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| CANADA | | | | | | | | |
| PROVINCE OF QUEBEC | | | | | | | | |
| DISTRICT OF | | MONTREAL | | | | | | |
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| No.: | 500-53-000603-215 | | | | | | | |
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| DATE: | June 10, 2024 | | | | | | | |
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| PRESIDING: | | | THE HONOURABLE | CATHERINE PILON, J.C.Q. | | | | | |
| WITH THE ASSISTANCE OF ASSESSORS: | | | | | Mtre Marie-Josée Paiement  Mtre Myriam Paris-Boukdjadja | | | |
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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 E.B. | | | | | | | | |
| Plaintiff | | | | | | | | |
| v. | | | | | | | | |
| 9302-6573 QUÉBEC INC. “BAR LUCKY 7” | | | | | | | | |
| -and- | | | | | | | | |
| SAYEED AHMED SIKDER | | | | | | | | |
| Defendants | | | | | | | | |
| -and- | | | | | | | | |
| **E.B.[[1]](#footnote-1)** | | | | | | | | |
| Alleged victim and complainant | | | | | | | | |
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| JUDGMENT | | | | | | | | |
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1. The Commission des droits de la personne et des droits de la jeunesse (CDPDJ) is acting in the public interest and on behalf of the alleged victim and complainant, E.B.
2. E.B. identifies as a trans woman. She applied for a job at Bar Lucky 7, operated by the defendant 9302-6573 Canada Inc. (the Bar), and attended a training at the request of the defendant, Sayeed Ahmed Sikder, the Bar manager. The employee who trained her was entirely satisfied with her work. After a few hours, however, Mr. Sikder asked E.B. if she was trans, to which she replied in the affirmative. The defendants then refused to hire her.
3. Mr. Sikder justified his refusal to hire E.B. because of the risk to her safety or his customers’ reactions.
4. E.B. filed a complaint with the CDPDJ for a discriminatory refusal to hire.
5. The CDPDJ found the evidence sufficient and, acting in the public interest and on behalf of E.B., argues in its factum that she was discriminated against based on her gender identity:

[translation]

22. Thus, by refusing to hire [E. B.] as a server based in whole or in part on her transsexuality, the defendants interfered with her right to equality in employment, without distinction or exclusion based on gender identity, the whole contrary to sections 10 and 16 of the *Charter of human rights and freedoms*, CQLR, c. C-12 (the “*Charter*”).

23. At the same time, the defendants interfered with [E. B.’s] right to the safeguard of her dignity, without distinction or exclusion based on gender identify, the whole contrary to sections 4 and 10 of the *Charter*.

1. The CDPDJ proposed measures of redress that include indemnities of $118.40 for loss of income, $12,000 for moral prejudice, and $2,000 each from the Bar and Mr. Sikder as punitive damages.
2. Mr. Sikder and the Bar ignored the proposed measures of redress, and the CDPDJ filed this application before the Tribunal.
3. The defendants never answered the application and did not attend the hearing, such that the Tribunal proceeded by default based on the evidence adduced by the CDPDJ.

**Issues**

1. To decide this dispute, the Tribunal must answer the following questions:
2. During the hiring process, was E.B., as a trans woman, discriminated against by the Bar and by Mr. Sikder based on her gender identity, contrary to sections 4, 10, and 16 of the *Charter of human rights and freedoms*?[[2]](#footnote-2)
3. If so, is E.B. entitled to the amounts claimed?

**Background**

1. Given the lack of any answer or participation by the defendants in the proceeding, the Tribunal considers that the allegations on the events as recounted in the originating application and the factum have been established on a balance of probabilities in light of the affidavits and exhibits filed.
2. E.B. has identified as a woman since she was a child.
3. After she moved to Montreal, E.B. started to look for work at a bar. She kept her mother informed of her efforts during their frequent telephone calls.
4. On March 29, 2017, E.B. applied for a job as a server at the Bar and sent in her curriculum vitae.
5. Shortly after, Mr. Sikder contacted her on Facebook, told her he was interested in her application, and informed her of the jobs available.[[3]](#footnote-3) They talked on the telephone, at Mr. Sikder’s request.
6. Mr. Siker asked her to come to the Bar the following evening for training. He said that he would not be there but that she would be greeted by other employees who would teach her what she needed to know.
7. Early in the evening on March 30, 2017, E.B. went to the Bar and was greeted by Mr. Sikder’s father, identified as the person in charge of the premises. He gave her the price list and the code to open the cash register and introduced her to D. S., an employee, to continue the training. He stayed in the room within view of the bar during the training.
8. During the hiring process, E.B. provided her identity documents, and photos were taken. She was given employment documents to read at home.
9. E.B. continued her training with Ms. S., who explained to her how to deal with customers and about the type of customers who patronized the Bar. Ms. S. told her she was happy with her work and that she was a good worker.
10. After about three hours of training, E.B. was informed that her training was over and that she would be contacted and given her work hours.
11. E.B. was overjoyed and called her mother to tell her she had the job as a server and would receive her schedule shortly.
12. E.B. knew that Mr. Sikder would return to the Bar later and she wanted to thank him, so she decided to stay to introduce herself in person. She liked the ambiance at the Bar and chatted with Ms. S. and the customers, as well as with the disk jockey and his spouse.
13. Mr. Sikder arrived a few hours later, around 1 a.m. He invited E.B. into his office and asked her what she thought about the training. He then asked her whether she was trans.
14. E.B. answered in the affirmative and said that all her legal documents were up-to-date and that she had completed her transition, had undergone sex reassignment surgery, and was a woman.
15. Mr. Sikder immediately informed her that he could not hire her.
16. E.B. replied that it was discrimination, that under the *Charter*, he could not refuse to hire her for this reason, that it would be like refusing to hire a woman because she is pregnant.
17. Mr. Sikder was indifferent to these arguments and told her:

[translation]

Yes, you can hear it a little in your voice. It doesn’t bother me, but my father is against it... Just last week I had to throw out someone with a baseball bat. The customers are old school, I don’t want to have to defend you every day.

…

I can offer you a drink before you leave.[[4]](#footnote-4)

1. E.B. was not paid for her training at the Bar and did not receive her share of the tips.
2. Devastated, E.B. left the office and told Ms. S. why she was not being hired. E.B. did not expect this; she was shocked and felt like everything had just collapsed. She was discouraged.
3. Ms. S. told her that she was aware and had defended her because she was amply satisfied with her work performance during the training.[[5]](#footnote-5)
4. Despite Ms. S.’s positive comments about E.B., Mr. Sikder firmly refused to hire her.
5. E.B. went to her car and burst into tears. She called her mother and told her she was considering suicide. She was inconsolable, repeating that her life was ruined because she would never be a woman due to her voice. She revealed a rather detailed plan to use her car to cause a fatal collision.
6. E.B.’s mother, then her sister, managed to console her somewhat and convince her not to do anything.
7. The next day, E.B. felt that she had been wronged and tried to contact Mr. Sikder again on Facebook. She sent him an excerpt from the *Charter* stating that the refusal to hire her because of gender identity was discriminatory.[[6]](#footnote-6) Mr. Sikder never answered.
8. E.B. filed a complaint with the CDPDJ two weeks later.
9. E.B. was depressed in the days and weeks following the incident on March 31, 2017. She felt as though her wings had been clipped after she had done everything to be considered a [translation] “real woman”. She lost all self-esteem.
10. E.B.’s mother witnessed her distress, sadness, anxiety, lack of motivation, and depressive state. She also observed E.B.’s fear of looking for work and the scars still present today because E.B. is preoccupied with her physical appearance.
11. E.B. became obsessed with the timbre of her voice and subsequently travelled to the United States twice for surgery on her vocal cords.

**Applicable law on discrimination based on gender identity or expression**

1. The *Charter* provisions relevant to resolving the dispute are as follows:

**4.** Every person has a right to the safeguard of his dignity, honour and reputation.

**10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

**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.

**49.** Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

1. In recent years, the legislation and case law on gender identity and expression have been rapidly changing.
2. Before embarking on the analysis, the Tribunal finds it useful to provide a brief historical overview and a review of the statutory and jurisprudential framework on the matter in Quebec and the rest of Canada. The terminology has also changed, and the Tribunal will use the terms as used in the different judgments referred to. The Tribunal will end this section with an attempted glossary of the terms related to gender identity or expression as they are currently understood.
3. **Legislative history and case law**
4. In 1978, the Quebec legislature introduced, in the *Civil Code of Québec* (CCQ), the possibility to change one’s name and designation of sex in the register of civil status[[7]](#footnote-7), thereby recognizing the existence of transgender people in Quebec law.
5. In 1998, in *Maison des jeunes*[[8]](#footnote-8), at a time when gender identity and expression did not yet appear as grounds of discrimination in section 10 of the *Charter*, the Human Rights Tribunal considered discrimination against trans people and, as it was called at the time, transsexuality.It concluded that discrimination based on transsexuality was covered by the ground of sex.[[9]](#footnote-9)
6. The discriminatory interference alleged in *Maison des jeunes* occurred in an employment context. The complainant was fired during her sex change process.[[10]](#footnote-10) Given that it happened concomitantly with the sex change, the Tribunal found that the transsexualism and process of changing sexual identity played a role in her dismissal.[[11]](#footnote-11) The Tribunal rejected the defence that her sexual identity would rationally prevent her from performing her job as a youth worker and would put them at risk.[[12]](#footnote-12)
7. In its analysis, the Tribunal based itself on, one, the social changes and growing awareness of this reality in Quebec[[13]](#footnote-13) and internationally,[[14]](#footnote-14) and two, the fact that transsexuality is [translation] “a discordance between the objective and subjective elements of sex”[[15]](#footnote-15) and an attempt to [translation] “reunite the disparate criteria that constitute sex”.[[16]](#footnote-16) In this sense, transsexuality is itself an issue of sex and is therefore covered by this ground.
8. At the time, the Tribunal already recognized that a sex change operation is not a necessary condition for access to this ground of discrimination,[[17]](#footnote-17) thereby departing from the CCQ requirements regarding sex change in the register of civil status.[[18]](#footnote-18)
9. Legislative amendments in 2013 that came into force on October 1, 2015, removed the requirement for medical treatment and surgical operation to change the designation of sex appearing on an act of birth.[[19]](#footnote-19)
10. Other legislative amendments in 2016 added “gender identity or expression” as protected grounds of discrimination to section 10 of the *Charter*.
11. Since 2016, it has been possible to change the designation of sex appearing on a minor’s act of birth: an adult, a tutor to a minor child, or a minor aged 14 years or older may apply for change of name to correspond to gender identity.
12. The Human Rights Tribunal has since applied this ground once, in *Kin*, where it granted the application in the context of discriminatory remarks.[[20]](#footnote-20) In its analysis, the Tribunal interpreted the ground of gender identity and expression in light of the earlier case law on the ground of sexual orientation. The Tribunal noted that insulting someone because of their gender identity violated their right to the safeguard of their dignity in a discriminatory manner.[[21]](#footnote-21)
13. In 2021, the Superior Court heard an application for a declaratory judgment in *Centre for Gender Advocacy*[[22]](#footnote-22) and considered in detail the place of transgender and non‑binary people in Quebec civil law, the designation and change of designation of sex in the register of civil status, and the designation of parents in a child’s act of birth.
14. Mtre Audrey Boctor, counsel for the plaintiffs, made the following comment regarding the judgment rendered by the Honourable Gregory Moore:

[translation]

The judgment describes the extreme vulnerability of trans and non-binary people and acknowledges the fact that this vulnerability is aggravated by the inaccessibility to identity documents that properly reflect their gender identity. We had to introduce testimony and studies showing the shocking rates of suicide in this community, especially for trans and non-binary adolescents without family support.[[23]](#footnote-23)

1. In response to the judgment, the legislature introduced legislative amendments in 2022.[[24]](#footnote-24) Among other things, it added the new article 70.1 CCQ stating that the designation of sex appearing in a person’s act of birth or death may refer to the identifier “non-binary”.[[25]](#footnote-25) It amended several CCQ provisions that refer to the father or mother, including articles 111 and 115 CCQ, to add the notion of “parent”[[26]](#footnote-26) and allows the designation of father, mother, or parent of a person appearing on the act of birth of their child to be changed to correspond to the designation of sex appearing in their act of birth or to have the designation “parent” appear instead.[[27]](#footnote-27)
2. The Court of Appeal was asked to rule on interpretation issues in *Centre for Gender Advocacy*[[28]](#footnote-28) and rendered judgment in March 2024[[29]](#footnote-29), the conclusions of which are as follows:

… **THE COURT**:

…

**STRIKES OUT**paragraph 341 of the judgment in first instance that declares invalid section 23.2 of the *Regulation respecting change of name and of other particulars of civil status*;

…

**DECLARES**that article 62 *C.C.Q.* must be read and interpreted such that the application for a change of given name made by a minor 14 years of age or over and motivated by a gender identity issue constitutes a *compelling reason* within the meaning of that article.[[30]](#footnote-30)

1. The Court of Appeal defined the debate as follows:

[2] Whereas several legislative provisions were in dispute at trial, this appeal only concerns two of them, which impose specific requirements on minors who wish to change the designation of their sex or one or more of their given names on their acts of civil status.[[31]](#footnote-31)

1. The Court of Appeal recognized that “[t]ransgender and non-binary youths between the ages of 14 and 17 are certainly part of a protected group, transgender and non-binary people having undisputedly been disadvantaged on account of their gender identity”.[[32]](#footnote-32)
2. Regarding the publication of an application for a change of name or sex or other conditions set out in articles 72 and 73 CCQ, the Court of Appeal understood from these provisions “that the legislator was aware of the importance of protecting the dignity and privacy of people whose gender identity does not correspond to the designation of sex that appears in their act of birth”.[[33]](#footnote-33)
3. Hamilton, J.A., on behalf of the Court of Appeal, added:

[220] To begin with, I find that transgender and non-binary persons are a protected group. Gender identity is not listed in section 15 of the *Canadian Charter*. However, under the test articulated by the Supreme Court in *Corbiere*, gender identity is analogous to the grounds enumerated in that section in that it is a personal characteristic “that is immutable or changeable only at unacceptable cost to personal identity.” The witnesses heard at trial were unanimous and the trial judge reached that conclusion, which should be adopted here. As for the *Quebec* *Charter*, gender identity is one of the grounds of discrimination expressly prohibited by section 10.[[34]](#footnote-34)

1. In 2023, the Canadian Human Rights Tribunal discussed the social context and vulnerability of transgender people in *Bilac*.[[35]](#footnote-35) That case involved a transgender man and dealt with gender identity and the harassment he experienced in his workplace:

[149] With respect to Mr. Bilac’s social context or vulnerability, I find the following comment by the BCHRT to be very relevant to the present complaint: “Vulnerability has different aspects, including that which relates to a complainant’s individual situation and that which relates to their membership in a group which society has stereotyped, disadvantaged, or marginalized”.

[150] There are several aspects to Mr. Bilac’s vulnerability in this case. Like the complainant in *Nelson v Goodberry*, Mr. Bilac was “vulnerable because of the forces of systemic inequality that continue to oppress, marginalize, and discriminate against transgender people” (at para 37). This context was effectively summarized by the BCHRT in *Oger v. Whatcott*

And so, despite some gains, transgender people remain among the most marginalized in our society. Their lives are marked by "disadvantage, prejudice, stereotyping, and vulnerability”… Transpeople face barriers to employment and housing, inequitable access to health care and other vital public services, and heightened risks of targeted harassment and violence. The results include social isolation, as well as higher rates of substance use, poor mental health, suicide, and poverty … .[[36]](#footnote-36)

[References omitted.]

1. Most Canadian provinces have legislated to prohibit any discrimination based on gender identity and expression, including Ontario[[37]](#footnote-37) and Manitoba in 2012[[38]](#footnote-38) and British Columbia in 2016.[[39]](#footnote-39) Parliament also amended the *Canadian Human Rights Act*[[40]](#footnote-40) in 2016[[41]](#footnote-41) to include the grounds of gender identity and expression. The application of these grounds of discrimination is very similar throughout Canada.
2. The courts in the other provinces have dealt with three issues relevant to the grounds of discrimination that are gender identity and expression: the non-necessity of surgery, the respect for chosen pronouns, and the neutral identification of sex in the register of civil status.
3. First, in *XY v. Ontario (Government and Consumer Services)*[[42]](#footnote-42), the Human Rights Tribunal of Ontario found that the requirement for “transsexual surgery” to change the sex designation in the Ontario register of civil status was discriminatory. Accordingly, all forms of medical treatment may no longer be a condition to change gender in the Ontario register of civil status or to raise the ground of discrimination based on gender identification under the Ontario *Human Rights Code*.
4. In *Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others*,[[43]](#footnote-43) the British Columbia Human Rights Tribunal determined that the complainant, Jessie Nelson, had been discriminated against in their employment on the basis of their gender identity and expression. Their supervisor misgendered them and called them by typically female nicknames. The Tribunal noted that trans employees are entitled to respect for their gender identity and that using the correct names and pronouns is not an accommodation.[[44]](#footnote-44) The use of female nicknames was meant not only to infantilize the complainant, but also to undermine and degrade their gender identity.[[45]](#footnote-45) For these reasons, the Tribunal found that their supervisor had discriminated against the complainant in their employment based on their gender identity and expression. Last, the Tribunal found that their employer also discriminated against them by terminating the complainant in part because of their gender identity.[[46]](#footnote-46)
5. Human rights tribunals have declared several times that failing to respect a person’s chosen pronouns is discrimination on the basis of gender identity.[[47]](#footnote-47)
6. In *Oger v. Whatcott (No. 7)*[[48]](#footnote-48), the British Columbia Human Rights Tribunal found that the defendant discriminated against the complainant because of her gender identity. The complainant was a trans woman who was running for provincial election. The defendant distributed flyers describing the complainant as a “biological male who has renamed himself ... after he embraced a transvestite lifestyle”.[[49]](#footnote-49) He also expressed a concern “about the promotion and growth of homosexuality and transvestitism in British Columbia and how it is obscuring the immutable truth about our God given gender”.[[50]](#footnote-50) Last, he asked voters not to vote for the complainant.[[51]](#footnote-51) The Tribunal found that the statistics adduced in evidence showed the marginalization, stigmatization, and discrimination faced by transgender people.[[52]](#footnote-52)
7. **Terminology**
8. The legislature and the courts have been attempting for several years to define the concepts of sex and gender. The scholarly commentary and the case law define the following terms thus:
9. **Sex** may be defined as:

A set of biological attributes … primarily associated with physical and physiological features including chromosomes …, hormone levels … and reproductive and sexual anatomy. … A person’s sex is most often designated by a medical assessment at the moment of birth or pre-birth … This is also often referred to as birth-assigned sex or sex assigned at birth.[[53]](#footnote-53)

[Emphasis added.]

1. **Gender** may be defined as:

The socially constructed roles, behaviours, expressions and identities of girls, women, boys, men and non-binary people.…[[54]](#footnote-54)

[translation]

Gender is a concept that describes both personal feelings and categories of social roles. Gender is usually defined according to two major categories (man and woman). Gender may also be understood as a continuum or constellation that includes but is not limited to both these categories. Historically, the term is rooted in medicine and was reappropriated, initially from a feminist perspective, to question the social roles assigned to people based on their sex and gender expression.[[55]](#footnote-55)

[Emphasis added.]

1. **Gender identity** is central to personhood.[[56]](#footnote-56) It is the way a person identifies with respect to their gender, be it as a man, a woman, both, neither, or another gender, independently of the sex assigned at birth.[[57]](#footnote-57) Gender identity develops at a young age, around 3 or 5 years old.[[58]](#footnote-58)

As the Superior Court recalls in *Centre for Gender Advocacy*[[59]](#footnote-59),“[g]ender identity is an immutable personal characteristic”, not merely a choice.[[60]](#footnote-60)

In *Bilac*[[61]](#footnote-61), the Tribunal stated that “[g]ender identity refers to how a person internally and individually experiences gender, and gender expression refers to how a person publicly presents their gender. Trans individuals such as Mr. Bilac have a gender identity which differs from the sex they were assigned at birth”.[[62]](#footnote-62)

1. **Gender expression** is the way an individual presents and communicates their gender, whether through dress codes, clothing, hairstyle, voice, speech, body language, choice of name, and personal pronouns.[[63]](#footnote-63)
2. **Trans** is an umbrella term that encompasses a diversity of gender identities[[64]](#footnote-64) and refers to a person whose gender identity does not align with the sex assigned to them at birth.

In *Centre de lutte contre l’oppression des genres*,[[65]](#footnote-65) the Court of Appeal uses the terms “transgender person” and “non-binary person” the way the Superior Court did in that same case to designate the respondents, “that is to say people whose gender identity does not correspond to the sex indicated on their act of birth”.[[66]](#footnote-66)

As of May 2021, there were over 100,000 trans people aged 15 and older in Canada, which is about 1 out of every 300 people.[[67]](#footnote-67) The term **trans woman** [translation] “refers to a person who identifies as a woman (or on the feminine spectrum) although assigned the male gender at birth”.[[68]](#footnote-68) The term **trans man** [translation] “refers to a person who identifies as a man (or on the masculine spectrum) although assigned the female gender at birth”.[[69]](#footnote-69)

1. **Non-binary** is defined as “an umbrella term to reflect a variety of gender identities that are not exclusively man or woman, and may be neither”.[[70]](#footnote-70)
2. **Transsexual** refers to a person who [translation] “wish[es] to change their body through hormonal or surgical treatment so that it matches their gender identity”.[[71]](#footnote-71) This term is considered archaic, even offensive, for certain trans people [translation] “because it has a medical connotation”.[[72]](#footnote-72)
3. **Cisgender** refers to a person “whose gender identity corresponds with what is socially expected based on their sex assigned at birth”.[[73]](#footnote-73)
4. It follows from the foregoing that the words “gender identity or expression” in section 10 of the *Charter* include trans people.

**Analysis**

1. **During the hiring process, was E.B., as a trans woman, discriminated against by the Bar and by Mr. Sikder based on her gender identity, contrary to sections 4, 10, and 16 of the *Charter*?**
2. Discrimination was defined by the Supreme Court of Canada in *Andrews*:[[74]](#footnote-74)

... a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society.

1. A discrimination analysis under section 10 of the *Charter* is a two-step process. At the first step, the plaintiff must show *prima facie* discrimination based on proof of the following three elements:

* a “distinction, exclusion or preference”;
* based on one of the grounds listed in the first paragraph of section 10 of the *Charter*, and
* which “has the effect of nullifying or impairing” the right to full and equal recognition and exercise of a human right or freedom.[[75]](#footnote-75)

1. Specifically with respect to the second element, the defendant’s decision need not necessarily be based exclusively on a prohibited ground. Indeed, “it is enough if that decision or action is based in part on such a ground”.[[76]](#footnote-76) Therefore, the ground must simply be a factor in the distinction, exclusion, or preference.[[77]](#footnote-77) For the last element, proof of a “double violation” is not required.[[78]](#footnote-78)
2. Once the plaintiff has proved these three elements, *prima facie* discrimination has been established and the first part of the analysis is complete. Moreover, the Supreme Court previously stated that under “Quebec law, the plaintiff is not required to prove that the defendant intended to discriminate against him or her”.[[79]](#footnote-79) At this stage, the defendant has the onus of justifying his or her decision or conduct on the basis of a defence or by refuting the alleged act.[[80]](#footnote-80) However, if proof of *prima facie* discrimination is not made, the courts will not examine the second step and will dismiss the application.
3. The CDPDJ must show that the distinction, exclusion, or preference affects the full and equal exercise of one of E.B.’s rights or freedoms guaranteed by the *Charter*. Section 10 must be joined with another right because it does not protect the right to equality as an independent right.[[81]](#footnote-81) The right to equality in employment and the right to the safeguard of dignity set out respectively in sections 16 and 4 of the *Charter* are part of these other *Charter*-guaranteed rights.
4. The right to equality in employment set out in section 16 of the *Charter* is inseparable from section 10. Thus, a violation of this right will be established once the plaintiff proves that the differential treatment of which she complains is based [translation] “on a prohibited ground in the exercise of her right to be hired”.[[82]](#footnote-82) Without denying the flexibility employers enjoy with respect to the hiring requirements and process of their staff, this discretion is circumscribed in particular by the grounds set out in section 10 of the *Charter*.[[83]](#footnote-83)
5. The right to equality in employment is violated where the employer’s refusal is based, in whole or in part, on a prohibited ground of discrimination.
6. In this case, the defendants’ refusal to hire the complainant is an exclusion or distinction within the meaning of section 10 of the *Charter*.
7. The Tribunal must determine whether this distinction or exclusion is based on an enumerated ground in section 10 of the *Charter*. The plaintiff need not prove that E.B.’s gender identity was the sole ground or causal factor for the refusal to hire. It is sufficient if the prohibited ground was considered to find that there was in fact discrimination.[[84]](#footnote-84)
8. The CDPDJ argues that the decision not to hire E.B. as a server at the Bar on March 31, 2017, was based on the fact that the defendants did not want to hire a trans woman. The CDPDJ must therefore prove that the differential treatment was based, even in part, on a prohibited ground, in this case the complainant’s gender identity.
9. The Tribunal has no doubt that the defendants’ refusal to hire was based on E.B.’s gender identity. She went to the Bar at Mr. Sikder’s request after she expressed an interest in the server position, followed by a telephone interview and an invitation to attend training the next day. Once at the bar, the complainant’s identity documents and hiring documents were exchanged. The training went well according to the trainer, Ms. S., who informed Mr. Sikder of everything.
10. It is clear that *prima facie* discrimination has been established: a server position was advertised. At Mr. Sikder’s request, the complainant attended a training session that went well. Mr. Sikder’s father told her that she would receive a work schedule. E.B. was refused the position because she is trans. She was excluded because of her gender identity, a prohibited ground of discrimination under section 10 of the *Charter*.
11. The second step in the analysis is the rebuttal or justification, when the burden of proof shifts. The defendant can rebut or justify his conduct on the basis of an exemption or defence provided for in the law or developed by the courts.[[85]](#footnote-85)
12. Section 20 of the *Charter* prescribes specific grounds that allow an employer to exclude or prefer certain people for an employment without it being considered discriminatory:

**20.** A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

1. With respect to hiring discrimination, section 20 of the *Charter* sets out the two possible defences: (1) a defence based on the “aptitudes or qualifications required for an employment” and (2) a defence based on the “charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory”. The second defence is irrelevant to this case, but what about the first defence?
2. To rely on a defence based on the aptitudes or qualifications required for an employment, the employer must justify its discriminatory standard by proving that it is a *bona fide* occupational requirement. To do so, the employer must show:

(1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;

(2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and

(3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose.[[86]](#footnote-86)

1. The standard will be reasonably necessary if it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.[[87]](#footnote-87)
2. The defendants have offered no justification. However, according to the complainant’s affidavit and the plaintiff’s factum, Mr. Sikder raised two elements to justify his refusal to hire: the complainant’s safety and his customers’ reactions to a trans woman being hired.[[88]](#footnote-88) The Tribunal must therefore consider these two grounds.
3. An analogy with situations where an employer refuses to hire a disabled person by claiming the person poses a danger to themselves or to others is helpful. It is not sufficient to refer to a simple risk of danger to refuse to hire a person. The risk must be sufficiently serious or excessive to constitute undue hardship.[[89]](#footnote-89)
4. First, in *Camping du Lac Morin*[[90]](#footnote-90), the defendant dismissed the complainant because it was afraid that she would injure herself while working at reception using her crutches. The Tribunal rejected this justification because the risk was not sufficiently serious to constitute undue hardship.[[91]](#footnote-91) The defendant’s fear was not based on objective evidence because the plaintiff had never fallen.
5. In *Samson-Thibault*[[92]](#footnote-92), the defendant refused to hire the complainant as a firefighter due to his colour blindness because it feared for the safety of its employees and the public.[[93]](#footnote-93) The Tribunal rejected this justification because the risk raised was not sufficiently serious or excessive to constitute undue hardship.[[94]](#footnote-94) The defendant had not assessed the complainant’s ability to work as a firefighter even though he already held this employment in another municipality and had offered credible and logical explanations to palliate his handicap.
6. In both cases, the defendants claimed that the prohibited ground of discrimination was the serious risk of danger to the complainant, the complainant’s colleagues, or the public. A simple risk, however, is insufficient.
7. In this case, according to E.B.’s written testimony, Mr. Sikder told her that he refused to hire her because she would be at risk of violence by customers if they discovered that she was a trans woman.
8. In the absence of evidence adduced by the defendants, these fears are merely allegations or speculation. It has not been established that there is a serious or excessive risk.
9. Like in *Camping du Lac Morin*[[95]](#footnote-95), this fear is unfounded even though trans women may be likely to experience violence.
10. It should also be recalled that employers have an obligation to protect the safety of their employees, particularly under the *Act respecting occupational health and safety*.[[96]](#footnote-96) Employers must see that their establishments are so equipped and laid out as to protect workers.[[97]](#footnote-97) They must also “take the measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace”.[[98]](#footnote-98)
11. The employer’s obligation under section 51 *AOHS* was analyzed in *Domtar inc.*,[[99]](#footnote-99) cited many times since.[[100]](#footnote-100) The Court of Appeal noted that the *AOHS* is a social law of public order that must be broadly interpreted.[[101]](#footnote-101) The protections set out in section 51 are not exhaustive and the employer must take all [translation] “measures “humanly logical and reasonable” to protect the health, safety, and physical integrity of workers”.[[102]](#footnote-102) Indeed, the employer’s responsibility to protect health and safety [translation] “requires that all the necessary measures be taken to achieve this objective, that the employer cannot merely do no harm and must instead actively seek and eliminate the sources of danger”.[[103]](#footnote-103)
12. In this case, the defendants had an obligation to protect the safety of all their employees, particularly with regard to their [translation] “old school” customers.[[104]](#footnote-104) The risk of violence toward the complainant, if this risk actually existed, does not relieve them of their obligation to protect the safety of their employees at the workplace.
13. The Tribunal also considers it relevant to address the justifications raised about the defendant’s customers. At one time in the past, fortunately bygone, economic justifications for discrimination were judged acceptable. In 1940, in *Christie v. The York Corporation*[[105]](#footnote-105), the Supreme Court held that freedom of commerce prevailed over human rights and freedoms. That case involved a tavern that refused to serve a Black man because of the colour of his skin. The Supreme Court concluded that freedom of commerce allowed customers to be refused, even on discriminatory grounds.[[106]](#footnote-106)
14. This justification was rejected in 1992 in *Zurich Insurance Co. v. Ontario (Human Rights Commission)*.[[107]](#footnote-107) The Supreme Court determined that “[h]uman rights values cannot be over-ridden by business expediency alone”.[[108]](#footnote-108)
15. The Tribunal subsequently reiterated that a discriminatory act based on colour cannot be justified on monetary or economic grounds.[[109]](#footnote-109)
16. More specifically, discrimination cannot be justified based on customers’ preferences. In *Jeudy*[[110]](#footnote-110), the defendant refused to hire the complainant because of the colour of his skin. The defendant tried to justify its discriminatory refusal by alleging that it would lose its customers.[[111]](#footnote-111) The Tribunal stated that [translation] “the fear of losing all or part of the clientele is a monetary or economic ground that is not set out in section 20, which deals with non-discriminatory distinctions based on aptitudes or qualifications required for an employment”.[[112]](#footnote-112)
17. In *Picard*[[113]](#footnote-113), the Tribunal rejected the idea that customers’ prejudices or preferences can justify hiring discrimination.[[114]](#footnote-114) In that case, the complainant was not hired as a barman due to his sex. The defendant tried to justify its refusal to hire by claiming that its customers preferred women serving at the bar.
18. More recently in *Resto-bar Le Surf*[[115]](#footnote-115), the Tribunal rejected the defendant’s justification based on economic grounds. The defendant refused to let Black people into its establishment, claiming that it had previously had problems with groups of young Black people and received complaints from its customers about them. The Tribunal reiterated that customers’ desires or preferences cannot justify discrimination.[[116]](#footnote-116)
19. When the Tribunal takes into consideration the justifications Mr. Sikder gave the complainant, as contained in the complainant’s written statement, two elements are raised: (1) his father said he was afraid of violent reactions by his customers,[[117]](#footnote-117) who were rather [translation] “old school”, and (2) he did not want to have to defend her every day.[[118]](#footnote-118) In the Tribunal’s view, these grounds are not a justification set out in section 20 of the *Charter*. The fact that customers were prejudiced against trans people or even violent cannot justify the refusal to hire her.
20. In conclusion, the justifications the defendants could have raised cannot be accepted. First, the burden of proof of justifications rested on the defendants. However, they did not participate in the hearing or adduce any evidence. Second, the justification regarding the complainant’s safety cannot be accepted. The risk of violence raised at the time of the refusal to hire was merely a risk such that it cannot constitute undue hardship. Moreover, employers have an obligation to protect the safety of their employees; therefore, this argument must be rejected. Third, the justification regarding the reactions of the defendants’ customers is an economic justification, which the case law rejects as justification for a discriminatory act.
21. **Is E.B. entitled to the amounts claimed?**
22. The CDPDJ proposes measures of redress that include an indemnity of $118.40 as damages for material prejudice for loss of income, $12,000 as damages for moral prejudice, and $2,000 each from the Bar and Mr. Sikder as punitive damages.
23. **Damages for material prejudice**
24. The Tribunal may order victims of discrimination to be fully or partially compensated for lost wages caused by the discriminatory act.
25. The complainant was not compensated for her training session at the Bar on March 30, 2017. She received none of the tips from the customers she served. The Tribunal finds that the complainant is entitled to the indemnity claimed of $118.40 for loss of income.
26. **Damages for moral prejudice**
27. The CDPDJ states that the complainant [translation] “felt denigrated and diminished by the defendants, particularly by Mr. Sikder’s remarks that denied her intrinsic value as a human being”.[[119]](#footnote-119)
28. In *Nyassa*, the Tribunal wrote:[[120]](#footnote-120)

[translation]

[59] The “crumbling skull” rule is inextricably linked to the victim’s pre-existing condition. While it may give rise to compensation for damage greater than those that may be reasonably expected, it is not meant to return the victim to a position better than the original position. In short, Mr. Levasseur “is liable for the additional damage but not the pre-existing damage”.

1. Furthermore, damages are not automatically awarded just because a *Charter* right has been interfered with. Proof of prejudice is still required.
2. Moreover, as the Court of Appeal noted, assessing moral prejudice is a delicate task that is discretionary in several regards:

[translation]

Translating moral prejudice into damages, that is, into monetary terms, is always delicate. As Vézina, J.A. wrote in *Calego International inc. c. Commission des droits de la personne et des droits de la jeunesse*, [translation] “[m]easuring moral prejudice and the resulting compensation is a delicate task that is necessarily discretionary”, and, I am tempted to add, almost arbitrary.[[121]](#footnote-121)

1. Has the CDPDJ established that E.B. suffered a moral prejudice?
2. E.B.’s affidavit states that when she left the Bar, she burst into tears in her car. She had a lengthy telephone conversation with her mother and confessed that she was considering suicide.
3. The intervention of her sister and her social worker was required to prevent her from doing so, because she had planned to collide with another car.
4. E.B. calmed herself down and, exhausted, went home. She tried to contact Mr. Sikder on Facebook the next day to see if he would give her an actual chance. He did not reply to her messages, even though he had been told that his actions were contrary to the *Charter*.[[122]](#footnote-122)
5. Some time later, E.B. started to become depressed. This incident was [translation] “the straw that broke the camel’s back”. She stated:

[translation]

I felt like my wings had been clipped. I had done everything to be considered a “real woman”. I had surgery. I legally changed my name. I felt that there was nothing else I could do that would make me a woman. I had lost all self-esteem.

1. The effects of Mr. Sikder’s conduct and his remarks about her voice had a marked effect on E.B. She explained that she subsequently went to the United States twice for operations on her vocal cords. She stated that to this day, she still has a complex about her voice.
2. The affidavit of E.B.’s mother corroborates E.B.’s distress after leaving the Bar. In addition to the suicidal remarks her daughter made during their telephone conversation on March 30, 2017, she also said that she was going to have her mouth sewn shut so that she would never have to go through such humiliation again. E.B. felt that her voice had ruined her life because she would never be viewed as a woman.
3. E.B.’s mother confirmed the devastating repercussions of this episode on the life of her daughter, who remains constantly preoccupied by her physical appearance.
4. She added that she witnessed her daughter’s subsequent fear of looking for a job.
5. The Tribunal does not doubt that E.B. was hurt by the refusal to hire based solely on her identity as a trans person. The consequences of the refusal triggered a depressive state and significantly damaged her self-esteem.
6. The suicidal thoughts and vocal cord surgeries are evidence of the serious prejudicial effects arising from the defendants’ employment refusal.
7. Even though there was no direct medical evidence of E.B.’s depressive state, the facts are sufficiently detailed to find that she suffered a significant moral prejudice that could have caused a depressive state, or at the very least make her depressed. In this regard, the Tribunal refers to a request to postpone the trial in the course of the proceedings while E.B. was in residential therapy under a physician’s supervision, five years after the incident.
8. The CDPDJ claims $12,000 on behalf of E.B. to compensate her moral prejudice.
9. In comparison, in *Maison des jeunes*, the Tribunal awarded the complainant $4,000 as damages for moral prejudice.[[123]](#footnote-123) However, that decision dates from 1998.
10. In the recent *Bilac*, rendered in 2023, the Canadian Human Rights Tribunal awarded the complainant $15,000.[[124]](#footnote-124) However, his situation was different from that of E.B. because the discriminatory harassment was spread out over more than a year.
11. The Tribunal finds that in the circumstances of this case, E.B. should be awarded $10,000 for the moral prejudice suffered due to the defendants’ discriminatory act.
12. **Punitive damages**
13. Section 49 of the *Charter* authorizes punitive damages in case of “unlawful and intentional interference”. In *Hôpital St-Ferdinand*[[125]](#footnote-125), the Supreme Court shed light on the conditions required to grant this type of damages:

[121] Consequently, there will be unlawful and intentional interference within the meaning of the second paragraph of s. 49 of the *Charter* when the person who commits the unlawful interference has a state of mind that implies a desire or intent to cause the consequences of his or her wrongful conduct, or when that person acts with full knowledge of the immediate and natural or at least extremely probable consequences that his or her conduct will cause. This test is not as strict as specific intent, but it does go beyond simple negligence. Thus, an individual’s recklessness, however wild and foolhardy, as to the consequences of his or her wrongful acts will not in itself satisfy this test.

1. Punitive damages are exceptional and satisfy the objectives of punishment, deterrence, and denunciation of conduct deemed particularly reprehensible. Punitive damages are intended to punish the perpetrator of an unlawful and intentional interference with a *Charter*-protected right, deter that person from reoffending, discourage others from acting in the same way, and express the Tribunal's disapproval of such conduct.
2. In *Richard v. Time Inc.*[[126]](#footnote-126), the Supreme Court wrote about the context of the analysis:

[210] Where a court decides to award punitive damages, it must relate the facts of the case before it to the objectives that underlie such damages and ask itself how, in that particular case, awarding them would further those objectives. It must try to fix the most appropriate amount, that is, the lowest amount that would serve the purpose.

1. Even though his employee informed him that the refusal to hire was discriminatory, Mr. Sikder remained totally closed to the complainant. He also did not reply to the complainant’s Facebook messages on March 31. He cannot claim that he did not know his conduct was discriminatory, and he never sought to discuss the situation to consider possible solutions.
2. Moreover, the defendants did not appear in this case, which compounds their deliberate and reckless behaviour.
3. This conduct shows that the interference was intentional.
4. The Tribunal finds that such conduct must be denounced and considers that ordering the Bar and Mr. Sikder to pay $2,000 as punitive damages is reasonable in the circumstances. The Tribunal cannot allow this kind of practice to continue in Quebec and therefore awards the amounts claimed by the CDPDJ against each defendant.

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| **FOR THESE REASONS, THE TRIBUNAL:**   1. **GRANTS** in part the plaintiff’s originating application; 2. **CONDEMNS** the defendants solidarily to pay E.B. $118.40 as damages for material prejudice, with interest at the legal rate plus the additional indemnity set out in article 1619 of the *Civil Code of Québec* since the Commission des droits de la personne et des droits de la jeunesse’s proposal on measures of redress was served on December 18, 2019; 3. **CONDEMNS** the defendants solidarily to pay E.B. $10,000 as damages for moral prejudice, with interest at the legal rate plus the additional indemnity set out in article 1619 of *the Civil Code of Québec* since the Commission des droits de la personne et des droits de la jeunesse’s proposal on measures of redress was served on December 18, 2019; 4. **CONDEMNS** the defendant 9302-Québec Inc. “Bar Lucky 7” to pay E.B. $2,000 as punitive damages, with interest at the legal rate plus the additional indemnity set out in article 1619 of the *Civil Code of Québec* as of the date of this judgment; 5. **CONDEMNS** the defendant Sayeed Ahmed Sikder to pay E.B. $2,000 as punitive damages, with interest at the legal rate plus the additional indemnity set out in article 1619 of the *Civil Code of Québec* as of the date of this judgment; 6. **THE WHOLE,** with legal costs. | | |
|  | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  CATHERINE PILON,  **Judge of the Human Rights Tribunal** |
| Mtre Justine St-Jacques  BITZAKIDIS CLÉMENT-MAJOR FOURNIER | | |
| For the plaintiff | | |
|  | | |
| 9302-6573 Québec Inc. “Bar Lucky 7”, absent from the hearing | | |
| -and- | | |
| SAYEED AHMED SIKDER, absent from the hearing | | |
| Defendants | | |
|  | | |
| Dates of hearing: | January 23, 2023 (case taken under advisement after receipt of the plaintiff’s written submissions on October 20, 2023) | |

1. In a judgment rendered on February 2, 2024, the Tribunal banned the disclosure, publication, and broadcast of the complainant’s name, and ordered that she be identified by the initials E.B. [↑](#footnote-ref-1)
2. CQLR, c. C-12 [*Charter*]. [↑](#footnote-ref-2)
3. Exhibit P-3, Facebookconversationsbetween E.B. and Sayeed Ahmed Sikder on March 30, 2017. [↑](#footnote-ref-3)
4. Affidavit of E.B., June 9, 2023. [↑](#footnote-ref-4)
5. Exhibit P-4, Facebookconversations between E.B. and D… S... on March 31, 2017. [↑](#footnote-ref-5)
6. Exhibit P-3, *supra* note 3. [↑](#footnote-ref-6)
7. *Act respecting the change of name and of other particulars of civil status,* SQ 1977, c. 19 [↑](#footnote-ref-7)
8. *Commission des droits de la personne et des droits de la jeunesse (M.L.) c. Maison des jeunes A...,* 1998 CanLII 28 (QC TDP)[*Maison des jeunes*]. [↑](#footnote-ref-8)
9. *Ibid.* at para. 111. [↑](#footnote-ref-9)
10. *Ibid.* at para. 128. [↑](#footnote-ref-10)
11. *Ibid.* at para. 130. [↑](#footnote-ref-11)
12. *Ibid.* at paras. 150 and 161. [↑](#footnote-ref-12)
13. *Ibid.* at para. 67 [↑](#footnote-ref-13)
14. *Ibid.* at para. 82. [↑](#footnote-ref-14)
15. *Ibid.* at para. 95. [↑](#footnote-ref-15)
16. *Ibid.* at para. 99. [↑](#footnote-ref-16)
17. *Ibid.* at para. 114. [↑](#footnote-ref-17)
18. In 2013, the Quebec legislature removed surgery as an essential requirement to change one’s name and sex in the register of civil status through the *Act to amend the Civil Code as regards civil status, successions and the publication of rights*, SQ 2013, c. 27, ss. 3 and 4. [↑](#footnote-ref-18)
19. *Ibid.* [↑](#footnote-ref-19)
20. *Kin c. McNicoll*, 2021 QCTDP 34. [↑](#footnote-ref-20)
21. *Ibid.* at para. 66. This judgment was rendered a few months before *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43. [↑](#footnote-ref-21)
22. *Centre for Gender Advocacy c. Attorney General of Quebec*, 2021 QCCS 191 [*Centre for Gender Advocacy*]. [↑](#footnote-ref-22)
23. Canadian Bar Association, “Une décision historique de la Cour supérieure du Québec en droits de la personne : Me Steeve Bujold s’entretient avec Me Audrey Boctor, avocate ayant plaidé la cause”, February 3, 2021, online: <<https://www.abcqc.qc.ca/Publications-Resources/Articles/2020-2021/Une-decision-historique-de-la-Cour-superieure-du-Q>>. [↑](#footnote-ref-23)
24. *Act respecting family law reform with regard to filiation and amending the Civil Code in relation to personality rights and civil status,* SQ 2022, c. 22. [↑](#footnote-ref-24)
25. *Ibid.,* s. 26. [↑](#footnote-ref-25)
26. *Ibid.,* ss. 32 and 34. [↑](#footnote-ref-26)
27. *Ibid.,* s. 39. [↑](#footnote-ref-27)
28. *Centre for Gender Advocacy, supra* note 22. [↑](#footnote-ref-28)
29. *Procureur général du Québec c. Centre de lutte contre l’oppression des genres,* 2024 QCCA 348 [*Centre de lutte contre l’oppression des genres*]. [↑](#footnote-ref-29)
30. *Ibid.* at paras. 4, 8, and 9. [↑](#footnote-ref-30)
31. *Ibid.* [↑](#footnote-ref-31)
32. *Ibid.* at para. 121. [↑](#footnote-ref-32)
33. *Ibid.* at para. 201. [↑](#footnote-ref-33)
34. *Ibid.* [↑](#footnote-ref-34)
35. *Bilac v. Abbey, Currie and NC Tractor Services Inc.,* 2023 CHRT 43 [*Bilac*]. [↑](#footnote-ref-35)
36. *Ibid.* [↑](#footnote-ref-36)
37. *An Act to amend the Human Rights Code with respect to gender identity and gender expression*, S.O. 2012, c. 7. [↑](#footnote-ref-37)
38. Bill 38, *The Human Rights Code Amendment Act*, 2012, 1st Sess., 40th Leg., Manitoba, 61 Elizabeth II, 2012. [↑](#footnote-ref-38)
39. *Human Rights Code Amendment Act*, 2016, SBC , c. 26. [↑](#footnote-ref-39)
40. *Canadian Human Rights Act*, RSC 1985, c. H-6. [↑](#footnote-ref-40)
41. *Act to amend the Canadian Human Rights Act and the Criminal Code*, SC 2017, c. 13. [↑](#footnote-ref-41)
42. *XY v. Ontario (Government and Consumer Services),* 2012 HRTO 726 at paras. 14-15 [*XY*]. [↑](#footnote-ref-42)
43. *Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others*, 2021 BCHRT 137 [*Nelson*]. [↑](#footnote-ref-43)
44. *Ibid.* at para. 80. [↑](#footnote-ref-44)
45. *Ibid.* at para. 86. [↑](#footnote-ref-45)
46. *Ibid.* at paras. 89 and 119. [↑](#footnote-ref-46)
47. See in particular *Dawson v. Vancouver Police Board (No. 2)*, 2015 BCHRT 54 at para. 270; *Oger v. Whatcott (No. 3)*, 2018 BCHRT 183 at para. 39; *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 at para. 253; *Nelson*, *supra* note 43 at paras. 89 and 102. [↑](#footnote-ref-47)
48. *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58. [↑](#footnote-ref-48)
49. *Ibid.* at para. 3. [↑](#footnote-ref-49)
50. *Ibid.* [↑](#footnote-ref-50)
51. *Ibid.* [↑](#footnote-ref-51)
52. *Ibid.* at para. 64. [↑](#footnote-ref-52)
53. Canadian Bar Association, “Access to Justice for Trans People”, September 2022 at 44, online: <[CBA Access to Justice for Trans People](https://cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/CBA_AccesstoJusticeforTransPeople.pdf)>. [↑](#footnote-ref-53)
54. *Ibid.* at 42. [↑](#footnote-ref-54)
55. Loïs Crémier & Lou Tajeddine, “Mieux nommer et mieux comprendre : changer de regard sur les réalités de la diversité de genre et les enjeux trans”, Conseil québécois LGBT, 2021 at 24, online: < [guide-mieuxcomprendre-FINAL-web.indd (conseil-lgbt.ca)](https://conseil-lgbt.ca/wp-content/uploads/2023/05/Tajeddine-et-Cremier-CQLGBT-2021-Enjeux-trans-diversite-de-genre.pdf)>. [↑](#footnote-ref-55)
56. *T.A. v. Manitoba (Justice)*, 2019 MBHR 12 at para. 22 [*T.A.*]. [↑](#footnote-ref-56)
57. Chaire de recherche sur l’homophobie, “Définitions sur la diversité sexuelle et de genre”, 2014, online: <[Définitions sur la diversité sexuelle et de genre (uqam.ca)](https://chairedspg.uqam.ca/upload/files/fiches-realises/D%C3%A9finitions_diversit%C3%A9_sexuelle_et_de_genre.pdf)> at 2. [↑](#footnote-ref-57)
58. *Centre for Gender Advocacy, supra* note 22 at para. 101. [↑](#footnote-ref-58)
59. *Ibid.* [↑](#footnote-ref-59)
60. *Ibid.* at para. 106*.* [↑](#footnote-ref-60)
61. *Bilac*, *supra* note 35. [↑](#footnote-ref-61)
62. *Ibid.* at para. 21. [↑](#footnote-ref-62)
63. *T.A.*, *supra* note 56 at para. 22. [↑](#footnote-ref-63)
64. Chaire de recherche sur l’homophobie, *supra* note 57 at 1. [↑](#footnote-ref-64)
65. *Centre de lutte contre l’oppression des genres*, *supra* note 29. [↑](#footnote-ref-65)
66. *Ibid.* at para. 23. [↑](#footnote-ref-66)
67. *Hansman v. Neufeld*, 2023 SCC 14 at para. 12 [*Hansman*]. [↑](#footnote-ref-67)
68. Chaire de recherche sur l’homophobie, *supra* note 57 at 1. [↑](#footnote-ref-68)
69. *Ibid.* [↑](#footnote-ref-69)
70. Canadian Bar Association, *supra* note 53 at 43. [↑](#footnote-ref-70)
71. *Ibid.* [↑](#footnote-ref-71)
72. Larousse, “transsexuel” [transsexual], online: <[Définitions : transsexuel - Dictionnaire de français Larousse](https://www.larousse.fr/dictionnaires/francais/transsexuel/79231)>; Office québécois de la langue française, “personne trans” [trans person], 2019, online: <[personne trans | GDT (gouv.qc.ca)](https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26532486/personne-trans)>; Alexandre Vigneault, “Fierté Montréal : Lexique LGBTQ”, La Presse, August 9, 2016, online: <[Lexique LGBTQ - La Presse+](https://plus.lapresse.ca/screens/adccfac9-849e-4701-87aa-6f168cd54f35%7C_0.html)>; Fondation Émergence, “Lexique”, online: <[Lexique | Fondation Émergence (fondationemergence.org)](https://www.fondationemergence.org/lexique#:~:text=Les%20pronoms%20correspondent%20g%C3%A9n%C3%A9ralement%20%C3%A0,eux%E2%80%9D%20ou%20%C2%AB%20ul%20%C2%BB.)>. [↑](#footnote-ref-72)
73. Canadian Bar Association, *supra* note 53 at 42. [↑](#footnote-ref-73)
74. *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 SCR 143 at para. 174 [*Andrews*]. [↑](#footnote-ref-74)
75. *Québec (Commission des droits de la personne et des droits de la jeunesse) v.* *Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 35 [*Bombardier*]. [↑](#footnote-ref-75)
76. *Ibid.* at para. 48. [↑](#footnote-ref-76)
77. *Ibid.* at para. 52. [↑](#footnote-ref-77)
78. *Ibid.* at para. 54. [↑](#footnote-ref-78)
79. *Ibid.* at para. 40. [↑](#footnote-ref-79)
80. *Ibid.* at para. 37. [↑](#footnote-ref-80)
81. *Gosselin* *v.* *Quebec (Attorney General)*, 2002 SCC 84 at para. 430; *Bombardier*, *ibid.* at para. 53. [↑](#footnote-ref-81)
82. *Commission des droits de la personne et des droits de la jeunesse c. Nicolet (Ville de)*, 2001 CanLII 88, at para. 65 (QC TDP), citing *Québec (Commission des droits de la personne) c. Collège Mérici*, 1990 CanLII 3828 (QC CQ) at 607. [↑](#footnote-ref-82)
83. *Commission des droits de la personne et des droits de la jeunesse (Arsenault) c. Institut Demers inc.*, 1999 CanLII 51 (QC TDP) at para. 63. [↑](#footnote-ref-83)
84. *Gaz métropolitain inc*., *Commission des droits de la personne et des droits de la jeunesse c. Gaz métropolitain*, 2008 QCTDP 24 at para. 415, rev’d in part by 2011 QCCA 1201 [*Gaz métropolitain*]. [↑](#footnote-ref-84)
85. *Bombardier*, *supra* note 75 at para. 37. [↑](#footnote-ref-85)
86. *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3 at para. 54 [*BCGSEU*]. [↑](#footnote-ref-86)
87. *Ibid.* at para. 62. [↑](#footnote-ref-87)
88. Affidavit of E.B., June 9, 2023, at para. 40. [↑](#footnote-ref-88)
89. *BCGSEU*, *supra* note 86 at paras. 2, 18, and 79; *Commission des droits de la personne et des droits de la jeunesse c. 9185-2152 Québec inc.,* 2015 QCCA 577 at paras. 56-57, 66, and 68 [*Radio Lounge Brossard*]; *Commission des droits de la personne et des droits de la jeunesse (Bencheqroun) c. Société de transport de Montréal*, 2020 QCCA 602 at para. 31; *Commission des droits de la personne et des droits de la jeunesse (M.R.) c. Société de transport de Montréal (STM)*, 2021 QCTDP 35 at para. 95. [↑](#footnote-ref-89)
90. *Commission des droits de la personne et des droits de la jeunesse (Houle) c. Camping du Lac Morin (9166-5018 Québec inc.)*, 2021 QCTDP 19 [*Camping du Lac Morin*]. [↑](#footnote-ref-90)
91. *Ibid.* at para. 93. [↑](#footnote-ref-91)
92. *Commission des droits de la personne et des droits de la jeunesse (Samson-Thibault) c. Ville de Québec*, 2023 QCTDP 2. [↑](#footnote-ref-92)
93. *Ibid.* at para. 426. [↑](#footnote-ref-93)
94. *Ibid.* at paras. 186-188. [↑](#footnote-ref-94)
95. *Camping du Lac Morin*, *supra* note 90. [↑](#footnote-ref-95)
96. *Act respecting occupational health and safety*, CQLR, c. S-2.1 [*AOHS*]. [↑](#footnote-ref-96)
97. Section 51(1) *AOHS*. [↑](#footnote-ref-97)
98. Section 51(16) *AOHS*. [↑](#footnote-ref-98)
99. *Domtar inc.* *c.* *Commission d’appel en matière de lésions professionnelles du Québec*, 1990 CanLII 3151 (QC CA) [*Domtar*]. See also: *Dollarama, s.e.c. #111 et Commission de la santé et de la sécurité du travail*, 2014 QCCLP 6679 (application for judicial review dismissed, TAT, 07-03-2016, 472124-62-1205-3R; application for judicial review, Sup. Ct., 15-06-2018, 500-17-093376-161 - discontinued) [*Dollarama*]. [↑](#footnote-ref-99)
100. See in particular: *Commission des normes, de l’équité, de la santé et de la sécurité du travail (CNESST) c. Brasserie Knowlton*, 2023 QCCQ 9840 at para. 4 [*Brasserie Knowlton*]; *Commission des normes, de l’équité, de la santé et de la sécurité du travail c. 9398-7113 Québec inc*., 2023 QCCQ 5261 at para. 24; *Professionnel(le)s en soins de santé unis (PSSU-FIQP) et CHSLD Vigi Reine-Élizabeth*, 2021 QCTAT 1401 at paras. 85-93; *Union des employés et employées de service, section locale 800 c*. *Services ménagers Roy ltée.*, 2021 CanLII 114756 (QC SAT) at paras. 52-59. [↑](#footnote-ref-100)
101. *Domtar*, *supra* note 99 at 5 and 20. See also: *Brasserie Knowlton*, *supra* note 100; *Dollarama*, *supra* note 99at para. 321. [↑](#footnote-ref-101)
102. *Couture c. Hydro Québec*, [1982] DTE T82-746 at 19; *Domtar*, *supra* note 99 at 20. See also: *Commission des normes, de l’équité, de la santé et de la sécurité du travail c. 9398-7113 Québec inc*., *supra* note 100 at para. 24; *Dollarama*, *supra* note 99at para. 324. [↑](#footnote-ref-102)
103. *Dollarama*, *supra* note 99at para. 321; See also: *Domtar*, *supra* note 99at 19; *C.S.S.T. c. G.T.E. Sylvania Canada Ltée,* [1984] TT 388, DTE 84T-878 at 18. [↑](#footnote-ref-103)
104. Affidavit of E.B., June 9, 2023, at para. 40. [↑](#footnote-ref-104)
105. *Christie v. The York Corporation*, 1939 CanLII 39 (SCC), [1940] SCR 139. [↑](#footnote-ref-105)
106. *Ibid.* at 141-146. [↑](#footnote-ref-106)
107. *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, 1992 CanLII 67 (SCC), [1992] 2 SCR 321. [↑](#footnote-ref-107)
108. *Ibid.* at 349. [↑](#footnote-ref-108)
109. *Commission des droits de la personne (Jeudy)* *c.* *Entreprises L.D. Skelling inc.,* 1994 CanLII 1791 (QC TDP) at 8 [*Jeudy*]; *Commission des droits de la personne et des droits de la jeunesse c. 2314-4207 Québec inc. (Resto-bar Le Surf),* 2007 QCTDP 9 at paras. 36-38 [*Resto-bar Le Surf*]. See also: *Procureur général du Québec c. Service des Taxis Nord-Est*, 1984 CanLII 5082 (QC SC) [*Service de taxis Nord-Est*]. [↑](#footnote-ref-109)
110. *Jeudy*, *supra* note 109. [↑](#footnote-ref-110)
111. *Ibid.* [↑](#footnote-ref-111)
112. *Ibid.* at 8. [↑](#footnote-ref-112)
113. *Commission des droits de la personne (Patry) c. Picard*, 1995 CanLII 1731 (QC TDP). [↑](#footnote-ref-113)
114. *Ibid.* at 4-5. [↑](#footnote-ref-114)
115. *Resto-bar Le Surf*, *supra* note 109. [↑](#footnote-ref-115)
116. *Ibid.* at paras. 36-39. [↑](#footnote-ref-116)
117. Plaintiff’s factum, August 5, 2021, at para. 16. [↑](#footnote-ref-117)
118. Affidavit of E.B., *supra* note 4 at para. 40. [↑](#footnote-ref-118)
119. Plaintiff’s factum, *supra* note 117 at para. 25. [↑](#footnote-ref-119)
120. *Tchakounte Nyassa c. Levasseur*, 2018 QCTDP 1. [↑](#footnote-ref-120)
121. *Commission des droits de la personne et des droits de la jeunesse (X) c. Commission scolaire de Montréal,* 2017 QCCA 286 (leave to appeal to SCC refused, 37538 (17 August 2017)) cited in *Commission des droits de la personne et des droits de la jeunesse (DeBellefeuille) c. Ville de Longueuil*, 2020 QCTDP 21 at para. 220. [↑](#footnote-ref-121)
122. Exhibit P-3, *supra* note 3. [↑](#footnote-ref-122)
123. *Maison des jeunes,* *supra* note 8 at para. 171. [↑](#footnote-ref-123)
124. *Bilac, supra* note 35 at para. 158. [↑](#footnote-ref-124)
125. *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, 1996 CanLII 172 (SCC), [1996] 3 SCR 211 at para. 121 [*Hôpital St-Ferdinand*]. [↑](#footnote-ref-125)
126. *Richard v*. *Time Inc.*, 2012 SCC 8. [↑](#footnote-ref-126)