



# Political discrimination and accommodation in the workplace

## CANADIAN EMPLOYMENT NEWS SERIES

### Employment Alert

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The British Columbia *Human Rights Code* prohibits discrimination against employees because of their political beliefs. At the same time, employees are bound by the duty of loyalty to their employers. What happens, then, when an employee's political activities are perceived to be in conflict with his employment obligations? The British Columbia Human Rights Tribunal sheds light on this issue in a recent decision.

In *Bratzer v. Victoria Police Department*, 2016 BCHRT 50, Constable Bratzer, an employee of the Victoria Police Department, complained that he was being discriminated against in his employment as a result of his activities as a member of Law Enforcement against Prohibition (LEAP), which advocates for the legalization of all illicit drugs.

Constable Bratzer gave many public presentations and media interviews as an active member of and spokesperson for LEAP, and he made it clear that he was expressing his own views and was not speaking on behalf of the Victoria Police Department.

As a constable on active duty at the Victoria Police Department, Constable Bratzer was responsible for enforcing the existing drug legislation. The department told him to be very careful with his activities on behalf of LEAP so that the public would not associate his views with the Victoria Police Department or lose confidence that the police were enforcing the existing drug laws.

One of the incidences of alleged discrimination was Constable Bratzer's planned participation in a City of Victoria Harm Reduction Conference. As this was a conference organized by the City of Victoria, the department took the position that any representations at the conference by a police officer should be done by a senior officer from the department. Constable Bratzer was instructed not to participate in the conference. As a result of that instruction, Constable Bratzer contacted the BC Civil Liberties Association, which filed a policy complaint on his behalf under the *Police Act*. The BC Civil Liberties Association together with LEAP issued a media release and started an online petition to complain about the actions of the Victoria Police Department and to support Constable Bratzer.

Constable Bratzer continued with his public presentations on behalf of LEAP. The tribunal stated that "he engaged in some 30 to 40 events prior to the end of 2010, including newspaper articles, open line radio programs in Vancouver, writing articles in newspapers and letters to the editor as well as being referenced in numerous newspaper articles." Reiterating its concern that the high-profile public presentations by Constable Bratzer in support of legalizing drugs could have the effect of undermining public trust in law enforcement, the Victoria Police Department told him that he was required to give the department notice of his proposed communications and request permission to engage in them. It did not prohibit Constable Bratzer from continuing his speaking engagements.

Constable Bratzer filed a human rights complaint with respect to the attempts by the department to require permission for his representations on behalf of LEAP. Stating that “the protection of ‘political belief’ must involve an expansive protection of both the beliefs and their manner of expressions, with minimal impairment of free expression,” the tribunal found that advocating for changes to drug laws should properly be considered a political belief.

## Employers must provide reasonable accommodation of employees’ political beliefs

The tribunal recognized that Constable Bratzer owed a duty of loyalty to his employer but also stated that he was entitled to reasonable accommodation. The tribunal found that the Victoria Police Department was trying to find a proper balance between the requirements of the department and permitting Constable Bratzer to express his views on behalf of LEAP. The tribunal also noted that the department “did not have a position on ending drug prohibition; and accordingly, it could not be said that he was taking a position contrary to that of the department.” Despite the fact that the department acted in good faith, the tribunal found that its various efforts to constrain the speaking activities of Constable Bratzer constituted discrimination on the basis of political belief contrary to the *Code*.

The tribunal awarded \$20,000 to Constable Bratzer for injury to dignity, feelings, and self-respect.

Employers must bear in mind that, despite the fact that employees have certain duties of loyalty to them, reasonable accommodation of the political beliefs of an employee is required.