

Evidence and Administrative Tribunals – A Practical Primer

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Break out session:

You are on a panel of the Human Rights Tribunal convened to hear and decide a complaint brought by Mr. X that his employer discriminated against him regarding employment because of age contrary to s. 13 of the *Human Rights Code*, which provides:

Discrimination in employment

- 13** (1) A person must not
- (a) refuse to employ or refuse to continue to employ a person,
 - or
 - (b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

Mr. X's employer terminated his employment as a waiter in its restaurant chain. Mr. X is 61 years old and believes he was terminated because of his age.

In order to succeed in the complaint, Mr. X must convince the panel that: he has the protected characteristic of age; his employer's conduct had a negative effect on Mr. X regarding employment; and his age was a factor in the negative effect.

Mr. X submitted the following evidence in support of his complaint:

- A letter from his employer terminating his employment
- His birth certificate
- A written statement from an anonymous colleague alleging that the employer is trying to “weed out” serving staff that are over the age of 35.
- A sworn statement by his wife that after Mr. X lost his job he became sad and grumpy
- A note from Mr. X’s doctor that Mr. X has no history of cognitive impairment
- A written statement from Mr. X’s personal trainer opining that Mr. X is in above average physical condition for a person of his age
- Mr. X’s collection of medals from all the 10 km races he has participated in during the past 5 years
- A statement from Mr. X’s best friend that losing his job caused Mr. X to become depressed
- A journal article from a geriatric medicine journal entitled: “Sixty...the new forty?”
- Copies of his diary entries from immediately prior to the termination of his job to present.
- Copies of Internet ads posted by his employer that show images of its various restaurants in which all the staff appear to be under the age of 25.
- The results of an FOI request, redacted for any personal information, that show the employer has fired 10 of its serving staff in the past year.
- A photograph taken by Mr. X of the restaurant Mr. X formerly worked at showing several of the serving staff, all appearing to be in their twenties.
- A napkin with the restaurant’s insignia and a handwritten note jotted on it that reads: “Mr. X, Thank you for the excellent service tonight! You really made our 30th wedding anniversary dinner a special one! From: the couple in the corner booth”
- A Facebook posting of a third party stating that they like dining at the employer’s restaurants because all the serving staff are young and “hot”.

Discussion Questions

1. Which evidence would you admit? Which evidence would you find inadmissible?
2. Do you need any more information about any of the evidence to make an admissibility ruling?
3. Which element(s) of the test for discrimination under s. 13 does each piece of evidence speak to?
4. How should the evidence be weighed?