

No promotion for city worker due to gender discrimination

Tribunal finds interviews favoured male candidate's skills over posted job qualifications



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An Ontario municipality discriminated against a female worker applying for a promotion by tailoring the interview process to emphasize a male candidate's skills over her own qualifications that

fit with the posted position, the Ontario Human Rights Tribunal has found.

It's a situation where the employer didn't follow its hiring policy and allowed bias – unconscious or not – to seep into the interview process, says Alice Wang, an employment and labour lawyer at Sherrard Kuzz in Toronto.

“The role was mischaracterized by the employer as supervisory and involving field work, but the evidence was that, once in the role, the successful candidate performed office work almost exclusively,” says Wang. “Additionally, the tribunal pointed out that technical office work was usually associated with female employees.”

Interviewed for new position

The worker was employed with the City of Brantford for more than 30 years, including a 15-year stint as the waste reduction co-ordinator in the solid waste department.

In September 2017, the superintendent of solid waste retired and the city restructured the department by creating new positions and redistributing functions. One of the new positions was that of collections supervisor.

The worker applied for the collections supervisor position and was one of three candidates selected for an interview. She was one of two female candidates, with the other being an external candidate. The lone male candidate was internal and reported to the same supervisor as the worker.

The worker was interviewed by a three-member panel that included her supervisor, another manager, and a human resources representative. The interview focused on supervisory “soft skills” rather than the technical knowledge that was necessary for the job. Only three of the 22 qualifications in the job posting were addressed in the interview.

The worker felt that her interview went well. However, the male candidate was awarded the position, which surprised her because she was better qualified technically.

The worker spoke to an HR representative, who told her that the interview focused on supervisory questions because the successful candidate could be taught the necessary technical knowledge but supervisory skills could not be taught. The worker found this odd, because the city offered supervisory courses – which she had taken the previous year – and there had been no testing of the candidates' ability to learn the required technical skills.

A BC health-care worker who had [equal or superior qualifications as women hired in his place](#) was awarded \$12,000 in damages for gender discrimination.

Discrimination complaint

The worker filed a human rights complaint alleging discrimination with respect to sex and gender, claiming that she was passed over for the promotion because she was a woman. She argued that the male candidate's strengths were in soft, supervisory skills and the interview was designed in a manner to focus on his strengths. She also argued that the interview process didn't follow the city's hiring policies – which normally required interviewing a minimum of five candidates and doing reference checks, neither of which were done – and gender-based discrimination was a factor in the hiring decision.

The worker also claimed that the successful candidate had been encouraged to apply and was coached through the process. She pointed to rumours in the office about him being selected and her supervisor telling her that “you don't want the position.”

The worker noted that after the successful candidate was promoted to the collections supervisor position, she continued to perform many of the duties of that position, suggesting that she was more qualified for the job.

The city countered that it designed the interview to focus on soft skills because they felt that the position would involve more field work supervising people on a daily basis and dealing with curbside complaints. However, the evidence was that another position dealt with curbside complaints and 60 to 80 per cent of the role was administrative office work – meaning that the city mischaracterized it as a field job, said the tribunal.

The tribunal found that the evidence indicated that the worker had the necessary supervisory, administrative, and technical experience for the collections supervisor position, so the question was whether the reason she didn't get it was discriminatory.

A small business must pay a former employee [more than \\$56,000 for sexual harassment](#) suffered at the hands of the owner, the Ontario Human Rights Tribunal has ruled.

Biased interview process

The tribunal also found that the interview panel's emphasis on soft skills was a deviation from the company's usual practice and was biased against candidates who may have had more technical expertise – such expertise was usually associated with office work traditionally done by females versus field work traditionally done by males. This made the interview process biased towards the male candidate who had more field experience and soft skills, said the tribunal.

The tribunal also found that the hiring process was not followed and the failure to interview five candidates or perform reference checks suggested that the panellists relied on their own work experiences with the candidates in evaluating their interview performances. In addition, the job posting didn't prioritize supervisory skills over the listed technical qualifications, said the tribunal.

The tribunal specifically commented on the failure to follow the city's own policies and practices for hiring because it left the hiring process susceptible to bias, says Wang.

“The failure to confer with references meant the interviewees relied more on their subjective work experiences with the candidates rather than external, objective sources, which would have mitigated the potential for bias,” she says. “While the employer relied heavily on the interview to justify why the successful candidate was hired, the questions asked and skills evaluated in the interview did not reflect the qualifications and requirements of the job as outlined in the posting.”

The evidence indicated that the successful candidate had more recent field experience and more technical training, but the worker did have relevant field experience, comparable training, and had completed waste management and management courses offered by the city. There was nothing in the evidence that could prove that the successful candidate was more qualified than the worker, said the tribunal.

An employment lawyer discusses whether workplace [discrimination can arise from a single incident](#).

Hiring process adapted to favour male candidate

The tribunal determined that the hiring process was adapted to prefer the male candidate's soft skills and downplay her own supervisory experience, while the male candidate's lack of technical experience was dismissed. Given these findings, along with the fact that the job was mischaracterized in the male candidate's favour, the tribunal said that “an inference of discrimination is more probable” than the city's justification for its approach to the interview process and the decision to not award the position to the worker.

“Over-reliance on field experience was one factor that led the tribunal to believe the decision not to hire the [worker] may have been influenced by gender,” says Wang. “The tribunal noted that there was a division in this workplace between administrative positions, which were held predominantly by females, and field jobs, held predominantly by males.”

In addition, the rationale provided by the city for why the worker was not hired suggested the decision may have been influenced by stereotypical gender-based assumptions, says Wang, pointing out that the female applicant was characterized as not having the right attitude to be in a supervisory role, despite having direct supervisory experience.

“[The worker] was characterized by an interviewer as being ‘emotional,’ which the tribunal accepted as a commonly held gendered stereotype faced by women,” adds Wang.

The tribunal declared that the city discriminated against the worker on the basis of sex or gender, with appropriate remedies to be determined.

Clear criteria needed

This decision highlights the importance for employers to develop clear criteria to assess job candidates and to consult external, objective references to mitigate subjective bias, says Wang.

“The employer in this decision placed great emphasis on supervisory and leadership qualities that are commonly attributed with male gender stereotypes and downplayed the supervisory skills and experience of the female applicant,” she says. “One way to address this is to consider the use of more objective knowledge tests and practical assignments, to get a clearer picture of each candidate’s skills.”

Other important practices that can help avoid discriminatory hiring include sticking to hiring policies and practices, offering unconscious bias training to interviewers, following a structured and prepared interview process, and using the same panel for all interviews to ensure consistency, says Wang.