

# CHAPTER SIX

---

## The Job Recruitment and Hiring Process

# I. The Common Law and Discrimination in Job Recruitment and Hiring

- In the Common Law, “complete freedom of commerce” reigns, with few exceptions.
- In *Christie v. The York Corporation (1936)*, Supreme Court ruled that the Common Law does not prohibit discrimination in the formation of a contract
- Years later, in *Seneca College v. Bhadauria (1981)*, SCC affirmed *Christie* when it ruled that a refusal to hire someone because of their ethnicity does not violate any recognized tort.
  - Therefore, discrimination issues in hiring must be dealt with under the second regime of work law: regulatory standards and human rights statutes in particular.

## II. Common Law Torts that Apply to Job Recruitment and Hiring

- Judges play a limited role in policing the job recruitment process.
- Common law judges have deployed both tort and contract law in their attempt to police dishonesty in the recruitment process.
- Chapter 6 explores several torts that prohibit dishonesty by job applicants and employers.

## Common Law Torts that Apply to Job Recruitment and Hiring (cont.)

### **A. Tort of Deceit or Fraudulent Misrepresentation by a Prospective Employer**

- An employer cannot deliberately mislead or lie to a prospective employee in order to induce that person to accept an employment offer.

### **B. Tort of Negligent Misrepresentation by a Prospective Employer**

- Tort of negligent misrepresentation is concerned with an employer misleading a prospective employee.
- It does not require a deliberate lie or intention to misinform.

# Common Law Torts that Apply to Job Recruitment and Hiring (cont.)

## A. Fraudulent or Negligent Misrepresentation by a Job Applicant

- This concerns misrepresentation by a prospective employee during the job recruitment process.



## Questions and Issues for Discussion

1. Amanda believes that she was denied a job because of her religion. Can she sue the employer for discrimination in a common law court?
2. What is the difference between fraudulent misrepresentation and negligent misrepresentation?
3. May lied on her application for a job as a barista at Starbucks about which university she attended. She is hired, but one year later the employer learns of the dishonesty. The employer immediately fires May with no notice, asserting dishonesty as the reason. Was the employer within its legal rights to do so?
4. What is the legal significance of a “duty of care” in cases involving the tort of negligence?
5. What was the employer’s misrepresentation in the case *Queen v. Cognos Inc.* (described in Box 6.2)? On what basis did the court calculate damages owing to the employee in that decision?