



# CANADA - UNITED KINGDOM Chamber of Commerce Over 93 YEARS OF NETWORKING

38 Grosvenor Street  
London W1K 4DP  
Tel: +44 (0) 20 7258 6578  
Fax: +44 (0) 20 7258 6594  
Email: [info@canada-uk.org](mailto:info@canada-uk.org)  
[www.canada-uk.org](http://www.canada-uk.org)

Summer 2014

**MINKEN**  
EMPLOYMENT LAWYERS

## Partnership Agreements likely not covered by the Human Rights Code

In **McCormick v Fasken Martineau DuMoulin LLP** the Supreme Court of Canada ruled that a partner in a partnership will generally not be considered an employee falling under the protection of human rights legislation, unless the substance of a partnership agreement gives the partner little control and influence over their working conditions and financial benefits.

### Background

Mr. McCormick was an equity partner at the law firm Fasken Martineau DuMoulin LLP ("Fasken"). Fasken's partnership agreement included a mandatory retirement provision which required equity partners to retire and divest their ownership shares the year before turning 65. At age 64, Mr. McCormick brought an application before the British Columbia Human Rights Tribunal challenging this provision as constituting age discrimination in employment, contrary to the British Columbia Human Rights Code ("Code"). Fasken sought to dismiss the

application, arguing that the Code does not apply as an equity partner is not in an employment relationship with the firm.

### Partnership: an employment relationship?

With respect to partnerships, the Court indicated the partner is collectively the employer in the partnership, and not an employee. Therefore, an equity partner, who has part ownership of the firm, will likely not be considered to be in an employment relationship with the partnership. As a result, the Court ruled that Mr. McCormick was not an "employee" protected by the Code.

### Lessons for Employers

Partners in partnerships will generally not be protected by human rights legislations, unless the substance of the partnership agreement erodes the partner's control and increases their dependency. Policies designed to benefit all partners approved by the partners will generally be

upheld by the courts. However, duties of utmost fairness and good faith mean that partnerships may still be liable for arbitrary disadvantage among partners.

### Lessons for Employees

Employees who are partners may not find protection from discrimination through human rights legislation. However, a partner may still be considered an employee protected by human rights legislation if the powers, rights and protections that give a partner control (and reduces dependency) are not present. A partner may find recourse if the actions of the rest of the partnership violates the duty of utmost fairness and good faith.

### Contact:

#### Ron Minken

Minken & Associates  
Professional Corporation  
McKinnon-Eakin House  
Circa 1835, 145 Main St  
Unionville, Markham, Ontario  
Canada L3R 2G7  
[rminken@minken.com](mailto:rminken@minken.com)  
[www.MinkenEmploymentLawyers.com](http://www.MinkenEmploymentLawyers.com)