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THE LIBERAL INTERPRETATION OF CHAPTER 151B

Chapter 151B, the Massachusetts anti-discrimination statute, directs that it "shall be construed liberally for the accomplishment of the purposes thereof . . ." G.L. c. 151B, § 9, ¶ 1. The provision has a profound effect on how c. 151B is interpreted. It means that the statute must be "broadly construed." Haddad v. Wal-Mart Stores, Inc., SJC-10261a, January 22, 2010 rescript. The Supreme Judicial Court has explicitly recognized the liberal provision as a reason why c. 151B is frequently interpreted in a different manner than parallel Federal laws. Cuddyer v. The Stop & Shop Supermarket Co., 434 Mass. 521, 536 (2001).

There is a dramatic correlation between a Court's citation to the provision and its propensity to accord c. 151B with a broad, pro-remedial interpretation. Of the **fifty opinions** I have found citing the liberal provision, all but three cases have broadly interpreted c. 151B in some significant manner, such as increasing the scope of non-discrimination provisions and supporting broad remedies for discrimination victims. Infra, nn. 1, 7-14. Conversely, of the many decisions choosing a narrow, non-remedial

interpretation of c. 151B, the vast majority fail to cite the liberal provision, while only three cite to it.[1]

One would assume that the legislature's directive for interpreting c. 151B would be given a central role in decisions involving that statute. However, most c. 151B decisions do not mention the provision. I have been able to find only eight published Federal court decisions that cite to it.

The failure to cite to the provision has a tangible effect on a court's interpretation of c. 151B and case outcomes. There are many instances in which one court that fails to cite to the liberal provision is reversed by another court that does.

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[1] See, e.g., Brown v. Office of the Commissioner of Probation, 2016 Mass. Lexis 761 (citing liberal provision but refusing to extend sovereign immunity to post-judgment interest in claims arising under c. 151B, § 9); Charland v. Muzi Motors, Inc., 417 Mass. 580, 582 (1994) (where an employee is within the c. 151B protected class, the employee may not pursue a c. 93, § 102 remedy, where the employee failed to comply with c. 151B administrative requirements); Pacella v. Tufts University School of Dental Medicine, 66 F. Supp. 2d 234, 242 (D. Mass. 1999) (holding that c. 151B definition of handicap requires consideration of mitigating measures, based on presumption that c. 151B is interpreted similarly to federal law); Keeler v. Putnam Fiduciary Trust Co., 238 F.3d 5, 11 (1st Cir. 2001) (rejecting liberal continuing violation theory for c. 151B, in favor of doctrine based on Federal interpretations of Title VII, without citing provision); Mullin v. Raytheon Co., 164 F.3d 696 (1st Cir. 1999), rehearing denied, 171 F.3d 710 (1st Cir. 1999) (refusing to recognize applicability of the disparate impact theory to c. 151B age discrimination claims, based on the presumption that c. 151B is interpreted similarly to federal law); Lolos v. Solutia, Inc., Memorandum and Order With Regard to Defendant's Motion for Summary Judgment, C.A. No. 99-30222, Neiman, U.S.M.J., (D. Mass. March 26, 2002) (reassignment will not be required as a reasonable accommodation under c. 151B, based on presumption that c. 151B is interpreted similarly to federal law in effect at the time of promulgation); but see Comey v. Hill, 387 Mass. 11, 15 (1982) (independent contractors not within scope of c. 151B, despite citing to liberal provision); Cormier v. Pezrow New England, Inc., 437 Mass. 302 (2002) (experienced executive with human resources staff not shown to have knowledge of c. 151B as to support multiplied damages, and citing to liberal provision); Knight v. Avon Products, Inc., 438 Mass. 413 (2003) (requiring a replacement five or more years younger than plaintiff to establish prima facie case, in absence of other evidence of discrimination, and citing to the liberal provision).

* Denying that an employer might be required to alter a grooming/appearance standard as an accommodation to an employee's sincerely held religious belief. Compare Coutier v. Costco Wholesale Corp., 390 F.3d 126, 137-138 (1st Cir. 2004), with Brown v. F.L. Roberts & Co., 452 Mass. 674 (2008).

* Imposing a restrictive version of the continuing violation doctrine. Compare Keeler v. Putnam Fiduciary Trust Co., 238 F.3d 5, 11-12 (1st Cir. 2001), with Cuddyer v. Stop & Shop Supermarket Co., 434 Mass. 521 (2001).

* Refusing to recognize applicability of the disparate impact theory to c. 151B age discrimination claims. Compare Mullin v. Raytheon Co., 164 F.3d 696 (1st Cir. 1999), rehearing denied, 171 F.3d 710 (1st Cir. 1999), with Sullivan v. Liberty Mutual Insurance Co., 444 Mass. 34, 38 n.10 (2005)

* Adopting a restrictive definition of handicap. Compare Pacella v. Tufts Univ. School of Dental Medicine, 66 F. Supp. 2d 234, 242 (D. Mass. 1999); with Dahill v. Boston Police Dept., 434 Mass. 233 (2001) (handicap considered in the absence of mitigating measures).

* Asserting that Massachusetts law imposes no requirement for an employer to engage in an interactive process to devise reasonable accommodations for employees. Compare Sullivan v. Raytheon Co., 262 F.3d 41, 47-48 (1st Cir. 2001), with MBTA v. MCAD, 450 Mass. 327, 343 n.17 (2008).

* Holding that c. 151B fails to afford standing to non-handicapped employees suffering adverse employment actions based on their association with a handicapped individual. Compare Ayanna v. Dechert LLP, 840 F. Supp. 2d 453, 457 (D. Mass. 2012), with Flagg v. AliMed, Inc., 466 Mass. 23, 37 (2013).

Given the substantial effect of the provision, the widespread failure to reference it raises the likelihood that the legislature's intent may be ignored. In this article, I will argue for the adoption of a mandatory and structured analysis, built on the foundation of liberal interpretation.

THE LEGISLATURE INTENDED LIBERAL CONSTRUCTION

The language of c. 151B can sometimes be less than clear. LaPierre v. MCAD, 354 Mass. 165, 174 (1968). Perhaps in recognition that there was much meaning to tease out of the statute, the legislature embraced the requirement for liberal construction: that the law "shall" be construed liberally to serve the purposes thereof. G.L. c. 151B, § 9.

The liberal provision has been present since 1946, when the initial non-discrimination provisions were promulgated. St. 1946, c. 368, § 9. The provision has remained through decades and many modifications to the chapter, although the provision was slightly altered in 2002. Every word of c. 151B, and every amendment, was enacted with the legislature's desire that it be interpreted liberally to accomplish the purposes of the statute.

LIBERALITY DOMINATES OTHER RULES OF INTERPRETATION

The preference for liberality is not merely just another rule of statutory construction that a court may consider; it represents the principal tenet for c. 151B interpretation. Consider the context for the legislature's directive. There are rules of statutory construction, which exist in abundance, to assist courts in discerning legislative intent.[2] See, e.g., G.L. c. 4, § 6. It is fair to summarize that the maze of rules are "complex, contradictory and not readily reconcilable." Shubow, Statutory Construction in Massachusetts, 79 Mass. L. Rev. No. 3, 114, 116 (September 1994). The legislature did not wish to leave the courts free to apply the vague and shifting principles that had been developed. The legislature chose to enshrine a single guidepost for statutory construction; a requirement that the chapter be liberally construed. G.L. c. 151B, § 9, ¶ 1.

The provision states that c. 151B "shall" be construed liberally. G.L. c. 151B, § 9, ¶ 1. The mandatory language requires that a liberal interpretation will not be rejected, in favor of other interpretations. This "shall" is a one-way ratchet, with no give. No other guiding principles were included. Lexecon, Inc. v. Milberg Weiss Bershad Hynes &

[2] Belonni v. Reservoir Nursing Center, 1 Mass. L. Rptr. No. 22, 448 (February 21, 1994), ("in choosing between two plausible readings of a statute, a court will adopt that which more faithfully effectuates legislative intent").

Lerach, 118 S. Ct. 956 (1998) ("The mandatory 'shall,' . . . normally creates an obligation impervious to judicial discretion").

In addition, c. 151B states that inconsistent laws will not limit its scope. Section 9 states: "The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provision hereof shall not apply . . ." (underlining added). Chapter 151B is thereby given a pre-eminent position among other laws. Likewise, the "liberal" provision is given pre-eminence over all other rules of interpretation.[3]

Further analysis establishes the liberal provision's primary status over other rules of construction.[4] A common law rule of statutory construction provides that civil rights statutes are subject to liberal construction to accomplish their remedial purposes. Depianti v. Jan-Pro Franchising International, Inc., 465 Mass. 607, 620 (2013) (Wage Act); Redgrave v. Symphony Orchestra, Inc., 399 Mass. 93, 99 (1987); Batchelder v. Allied Stores Corp., 393 Mass. 819 (1985); see also Welch v. Mayor of Taunton, 343 Mass. 485, 487 (1962); Legarry v. Finn Motor Sales, Inc., 304 Mass. 446 (1939). Thus, even if the "liberal" provision of c. 151B had never existed, courts would still have the presumption of liberality available in their arsenal of interpretive aids. In order for the liberal provision to have any effect, and avoid an interpretation in which the provision is

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[3] While other Massachusetts statutes require liberal construction (see G.L. c. 40J, § 10; c. 65, § 24F; c. 121C, § 18; c. 231A, § 9), c. 151B is apparently unique in that its "liberal" provision is paired with a requirement that other, inconsistent laws do not apply.

[4] For example, c. 151B has been liberally interpreted in a manner that appears to accord certain words no meaning. See LaPierre v. MCAD, 354 Mass. 165, 174-5 (1968) ("national origin" assumed to include concept of national ancestry, even though "national ancestry" is used as a separate concept elsewhere in the statute).

a nullity, the provision must raise the presumption of liberality above that provided by the common law rule.

It should not be a surprise that the "liberal" provision trumps other rules of statutory interpretation. For example, the first rule of statutory interpretation is that, generally, the clear and unambiguous language of a statute should control. General Electric Co. v. Department of Environmental Protection, 429 Mass. 798, 802 (1999). However, the common law has established that civil rights statutes are to be construed liberally, even beyond the dry statutory language, such that "cases within the reason, although not within the letter, of a remedial statute are embraced by its provisions." Redgrave v. Boston Symphony Orchestra, Inc., 399 Mass. 93, 99 (1987).[5] Common law liberal construction permits an expansive interpretation from restrictive language, where the legislature did not foresee the issues that could arise from the restrictive language. Dipianti, 465 Mass. at 620-622 (defendant liable under the Wage Act even though no contract runs between plaintiff and defendant, despite statutory language indicating such a requirement).

Therefore, the primacy of the "liberal" provision over other rules of construction is not only well founded in the statutory language, it is consistent with the common law, and does not yield outrageous results that common law would reject. And if the "liberal"

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[5] There are other exceptions to the bedrock "plain meaning" principle. For example, the plain language of a statute will be rejected if the consequences of such construction are unreasonable. Pysz v. Contributory Retirement Appeal Board, 403 Mass. 514, 517 (1988). Clear statutory rules of construction should be overlooked if their observance would lead to a construction either inconsistent with the intent of the legislature, or repugnant to the context of the statute. G.L. c. 4, § 6, ¶ 1. Even when the plain language of a statute militates a certain interpretation, courts have gone further and have analyzed

provision is to be accorded any effect beyond what is already provided by the common law presumption for civil rights laws, it must be accorded weight beyond the presumption already available in common law: it must be the mandatory, central foundation of c. 151B analysis.

REASONABLE INTERPRETATIONS ARE CONSIDERED

There is one important limitation on the preference for liberal construction: the liberal interpretation must be reasonable. See Cuddyer, 434 Mass., at 534. Certainly, the "liberal" provision cannot be interpreted to favor unreasonable interpretations of c. 151B. Thus, if there exists a reasonable and liberal interpretation that accomplishes the purposes of c. 151B, that interpretation must prevail.

A reasonable interpretation that liberally supports c. 151B purposes shall prevail, even when another reasonable interpretation exists. The issue is not whether one side presents the most reasonable argument. This is not a balancing approach. Rather, once a reasonable, liberal interpretation is proffered, it "shall" prevail. G.L. c. 151B, § 9, ¶ 1.

ERISA law provides an analogy to this type of inquiry: a plan administrator's reasonable interpretation of a benefit plan will be upheld, even if the beneficiary proffers an equally reasonable or more reasonable interpretation. See Terry v. Bayer Corp., 145 F.3d 28, 40 (1st Cir. 1998). This rule of construction may also be analogized to the "disfavored drafter" presumption in contract law, where an ambiguous contract will be accorded a reasonable construction favoring the non-drafter, even if the drafter suggests other very plausible interpretations. See Merrimack Valley Nat'l Bank v. Baird, 372 Mass. 721, 724 (1977).

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legislative history. Bynes v. School Committee of Boston, 411 Mass. 264, 267-268

Similarly, the liberal provision compels a specific choice among competing, reasonable interpretations.

How does the court determine whether a liberal interpretation is reasonable? It uses the ordinary rules of statutory construction. See, e.g., Worcester Housing Authority v. MCAD, 406 Mass. 244, 247 (1989).[6] However, this inquiry involving other rules of construction must be carefully performed. The proper inquiry is whether the liberal interpretation is reasonable. If so, it controls, and the inquiry is at an end. The inquiry involving other rules of construction does not focus on which is the "most reasonable" interpretation. Such an inquiry would be at odds with the legislative intent that the law "shall be liberally construed."

THE PURPOSES OF CHAPTER 151B

Having established the primacy of liberal construction, the stage is set to elaborate the necessary steps for analyzing c. 151B. First, it is necessary to discern "the purposes" of c. 151B. G.L. c. 151B, § 9, ¶ 1.

(1991)

[6] A court should give effect to all words in a statute but should not overemphasize any. MCAD v. Liberty Mutual Ins. Co., 371 Mass. 186, 193-194 (1976). The prevailing interpretation of analogous Federal statutes at the time a similarly worded portion of a Massachusetts statute was enacted may assist the Court's interpretation, even if those interpretations are later abandoned. E.g., Dahill v. Police Department of Boston, 434 Mass. 233, 238 (2001). Massachusetts Courts may look to constructions of similar Federal statutes for guidance, even if the Federal statute was enacted after the Massachusetts statute. Dartt v. BFI, Inc., 427 Mass. 1, 9 (1998). Legislative history may be considered. Bynes v. School Committee of Boston, 411 Mass. 264, 268 (1991). Courts should enforce c. 151B according to its plain meaning. Bynes v. School Committee of Boston, 411 Mass. 264, 267 (1991). There is a presumption that a statute is intended to be interpreted in harmony with prior enactments to give rise to a consistent body of law. Charland v. Muzi Motors, Inc., 417 Mass. 580, 583 (1994). Words should not be rendered superfluous. Worcester Housing Authority v. MCAD, 406 Mass. 244, 247 (1989). The inaction of a subsequent legislature has no persuasive significance with

The general purpose of the statute is to minimize, penalize and eliminate discrimination. G.L. c. 151B, § 3(9); Beaupre v. Cliff Smith & Associates, 50 Mass. App. 480, 492 (2000); MCAD v. Liberty Mutual Ins. Co., 371 Mass. 186, 191 (1976); Haddad v. Wal-Mart Stores, Inc., SJC-10261a, January 22, 2010 rescript. The statute reflects an "overriding governmental policy proscribing various types of discrimination." Warfield v. Beth Israel Deaconess Med. Ctr., Inc., 454 Mass. 390, 398 (2009). Even more broadly, the purpose of c. 151B is to remove "artificial, arbitrary and unnecessary barriers to full participation in the workplace." Harvard Law School Coalition for Civil Rights v. President & Fellows of Harvard College, 413 Mass. 66, 68 (1992).

More specific purposes may also be gleaned from careful review of specific provisions. For example, the c. 151B provision relating to handicap discrimination was enacted to "encourage impaired persons to overcome or mitigate their disabilities." Dahill v. Police Department of Boston, 434 Mass. 233, 238 (2001).

As shown above, the true battle is not over which side has the more reasonable interpretation c. 151B. The real battle is over which side advances a reasonable interpretation that accomplishes "the purposes" of the statute, with a preference for liberal interpretations. G.L. c. 151B, § 9, ¶ 1. Thus, an inquiry into the purposes of c. 151B assumes a greater importance than in the interpretation of other statutes.

SELECTION AMONG COMPETING PURPOSES

Chapter 151B represents a compromise of competing interests, and likewise, competing purposes may be discerned in its provisions. See Charland v. Muzi Motors, Inc., 417 Mass. 580, 582 (1994). Therefore, an identification of c. 151B's purposes does

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regard to the intent of an earlier legislature. MCAD v. Liberty Mutual Ins. Co., 371

not end the matter. Somehow, a court will have to select between competing purposes before deciding which interpretation to favor.

An example will illustrate this point of competing purposes. Chapter 151B does not apply to employers with five or fewer employees. G.L. c. 151B, 1(5). A plaintiff, arguing that an owner of a company should be counted as an "employee" for the purposes of this provision, would argue that doing so would further c. 151B purposes in preventing discrimination, and allow the non-discrimination provisions to apply to a greater number of Massachusetts workers. A defendant, urging a restrictive approach, would argue that one of c. 151B's goals is to provide small employers the utmost freedom in their hiring practices, and that counting people who are not ordinarily thought of as employees would violate this purpose. Both interpretations arguably further the purposes of c. 151B, as expressed in its language, and the proper answer is not clear merely from looking at the purposes. Each interpretation supports a different purpose.

How is a court to choose between interpretations furthering competing purposes reflected in the statutory language? The answer is that the "liberal" interpretation is given a preference. G.L. c. 151B, § 9, ¶ 1.

"LIBERAL" MEANS EXPANSIVE

What is a "liberal" construction? For example, using the above example, should liberal construction favor the c. 151B goal of eradicating discrimination by considering the owner as an employee, or should the statute be construed liberally to preserve the area of freedom carved out for small employers?

Mass. 186, 193-194 (1976). Deference is accorded to the pronouncements of the MCAD.

The "liberal" approach represents an interpretation that broadens the range of anti-discrimination provisions and remedies. Haddad v. Wal-Mart Stores, Inc., SJC-10261a, January 22, 2010 rescript (section 9 of c. 151B requires that the statute be "broadly construed" to discourage unlawful discrimination). The overarching presumption is that c. 151B should apply to all claims and situations that can be reasonably interpreted to fall within its scope. See Tony and Susan Alamo Foundation v. Secretary of Labor, 105 S. Ct. 1953, 1959 (1985) (court should construe statute entitled to liberal interpretation "to apply to the furthest reaches consistent with congressional direction"). The many cases citing the provision demonstrate that "liberal" interpretations favor the extension of coverage. Those cases have:

- broadly interpreted c. 151B to increase the scope of non-discrimination provisions;[7]

[7] Flagg v. Alimed, Inc., 466 Mass. 23 (2013) (employee is in protected class in that he was associated with a handicapped spouse who would increase employer's insurance burden); Psy-Ed Corp. v. Klein, 459 Mass. 697 (2011) (c. 151B, §§ 4(4) & (4A) prohibit post-employment retaliation, including the filing of a baseless defamation suit against an ex-employee. No employment relationship is necessarily required for a plaintiff to sue a defendant under these provisions); Modern Continential v. MCAD, 445 Mass. 96, 105-106 (2005) (employer is responsible to remedy sexually harassing environment caused by employees of a different company); LaPierre v. MCAD, 354 Mass. 165, 174-5 (1968) (protected class of "national origin" broadly interpreted to include ancestry; thus, discrimination against Puerto Rican, who is an American by national origin, is nevertheless illegal); Dahill v. Police Department of Boston, 434 Mass. 233, 238 (2001) (protected class of handicapped is determined without regard to consideration of mitigating measures); Worcester Housing Authority v. MCAD, 406 Mass. 244, 247 (1989) (discrimination prohibition based on "marital status" protects unmarried individuals); Krause v. UPS Supply Chanin Solutions, Inc., Memorandum and Order, C.A. No. 08-cv-10237, Woodlock, J., (D. Mass. October 28, 2009), at 30 (taking maternity leave is a protected activity, for which retaliation is proscribed); Silvieri v. Commonwealth of Massachusetts, 21 Mass. L. Rptr. No. 5, 97 (July 17, 2006) (discrimination against a woman with a young child constitutes gender discrimination motivated by sex-based stereotypes, even in the absence of evidence that males with young children were treated better by the employer); New Boston Select Group, Inc. v.

- expanded respondent liability, limited defenses, and limited the burden of proving mens rea;[8]
- expanded the range of parties responsible for preventing and remediating discrimination;[9]

DeMichele, 15 Mass. L. Rptr. No. 20, 473, 478 (January 13, 2003) (cutting off compensation, terminating contract with husband, suing plaintiff, not paying bonus were found to be retaliatory); Lie v. Sky Publishing Co., 15 Mass. L. Rptr. No. 18, 412 (December 30, 2002) (transsexual discrimination may be actionable as form of gender discrimination or handicap discrimination); but see Comey v. Hill, 387 Mass. 11, 15 (1982) (independent contractors are not within protected class, despite section 9 guidance).

[8] Porio v. Dept. of Revenue, 2011 Mass. App. Lexis 1101, at 20 (legislature waived sovereign immunity for c. 151B age discrimination claims relying on a disparate impact theory of liability); College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 165 (1987) (sexual harassment constitutes actionable discrimination, and rejecting Federal approaches by holding that an employer is strictly liable for the acts of those upon whom it confers authority); Sauer v. Belfor USA Group, Inc., 2016 U.S. Dist. Lexis 120781 (D. Mass.) (employer is liable for sexual harassment perpetrated by a supervisor, even if it is not the plaintiff's direct supervisor); Noviello v. Boston, 398 F.3d 76, 95 (1st Cir. 2005) (no Farragher defense to harassment claims under c. 151B); Gnerre v. MCAD, 402 Mass. 502, 506-507 (1988) (sexual harassment violates prohibition against discrimination in housing); see also Redgrave v. Boston Symphony Orchestra, Inc., 399 Mass. 93, 99 (1987) (citing common law presumption of liberal interpretation, and holding that specific discriminatory intent is not required for liability under Massachusetts Civil Rights Act).

[9] Beaupre v. Cliff Smith & Associates, 50 Mass. App. 480, 492 (2000) (sexual harasser is individually liable); Martin v. Irwin Industrial Tool Co., 2012 U.S. Dist. Lexis 62293 (D. Mass.), at 8-9 (individual liability for individual harasser, even if harasser is a co-worker and has no managerial or supervisory authority); Weston v. Town of Middleborough, 14 Mass. L. Rptr. No. 14, 323 (April 8, 2002) (municipal utility may be responsible for sexual harassment of elected member of the Board); Winsmann v. Choate Health Management, 8 Mass. L. Rptr. No. 21, 480, 482 (July 27, 1998) (entities that share control over employment are jointly and severally liable); Chapin v. University of Massachusetts, 977 F. Supp. 72, 80 (D. Mass. 1997) (supervisor may be individually liable where supervisor knew of sexual harassment and failed to take action); Campbell v. Advantage Transportation, 15 MDLR 1601, 1614-16 (1993) (applying single employer doctrine to impose liability on interrelated companies); Fluet v. Harvard Univ., 2001 Mass. Comm. Discrim. LEXIS 40, 110 (individual liability); Manon v. Rosewood

- expanded exceptions to administrative requirements;[10]
- established c. 151B's non-interference with other laws benefiting the protected classes;[11]
- supported broad remedies for discrimination victims;[12]

Nursing & Rehab. Center, 2002 Mass. Comm. Discrim. LEXIS 94, 13 (individual liability).

[10] Cormier v. Pezrow New England, Inc., 437 Mass. 302, 304-6 (2002) (c. 151B venue provision permits filing in a number of venues, and penalty for improper venue is not dismissal); Cuddyer v. The Stop & Shop Supermarket Co., 434 Mass. 521, 534-537 (2001) (adopting broad continuing violations doctrine, which is more permissive than First Circuit doctrine); Rock v. MCAD, 384 Mass. 198, 206 (1981) (upholding MCAD regulation on continuing violations); Pryor v. Holiday Inn, Inc., Findings of Fact, Conclusions of Law and Order for Judgment, C.A. No. 32975, Suffolk, ss., McHugh, J., (November 6, 1985), reprinted as 8 MDLR 1117, 1127-9 (LOPC finding of MCAD does not preclude civil action under section 9 of c. 151B); Francisque v. Massachusetts Financial Services Co., 2000 Mass. Super. LEXIS 305, 12-13 (c. 151B civil action is not limited to exact allegations contained in MCAD charge, but may include claims that come within MCAD's potential investigation that could grow out of the charge of discrimination); Smith v. Mitre Corp., 949 F. Supp. 943, 948 (D. Mass. 1997) (Complainant need not submit a separate administrative filing to pursue retaliation civil action); White v. Massachusetts State Police, 17 Mass. L. Rptr. No. 9, 200, 203 (February 2, 2004) (complainant need not name individual respondent in MCAD charge and need not file another MCAD charge based on subsequent retaliation); Chatman v. Gentle Dental Ctr., 973 F. Supp. 228, 235 (D. Mass. 1997) (failing to name a party as a respondent in an MCAD charge does not necessarily preclude later naming the party as a defendant in a civil action)/

[11] Thurdin v. SEI Boston, LLC, 452 Mass. 436 (2008) (claim arising under Massachusetts Equal Rights Act, MERA, 93, § 102, is not barred by c. 151B, where the defendant/employer is too small to be covered by c. 151B; Jancey v. School Committee of Everett, 421 Mass. 482, 495 (1995) (Massachusetts Equal Pay Act claim not barred by c. 151B); Local Finance Co. v. MCAD, 355 Mass. 10, 14-15 (1968) (c. 151B does not repeal public accommodation provisions); Comey v. Hill, 387 Mass. 11, 19-20 (1982) (c. 151B is not meant to be an exclusive remedy, and does not preempt an intentional interference with contractual relations claim, where the improper motive alleged was age discrimination).

[12] Haddad v. Wal-Mart Stores, Inc., SJC-10261a, January 22, 2010 rescript) (appellate attorneys fees must be awarded to encourage competent counsel to seek judicial relief for discrimination claims); Gasior v. Massachusetts General Hospital, 446 Mass. 645 (2006)

- increased the powers of the Massachusetts Commission Against Discrimination to investigate and remedy discrimination.[13]
- Restricted enforcement of waivers of c. 151B rights and remedies, including of mandatory arbitration provisions.[14]

Thus, a liberal interpretation favors a widening area of coverage and remedy. If the holdings of the cases listed in footnotes 7-14 appear lopsidedly pro-plaintiff, there is a reason for this. Anti-discrimination statutes "are expressly directed against employers; [the Legislature] intended in these statutes to regulate [employers'] conduct for the benefit of employees." Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, 101 S. Ct. 1571 (1981); see also Thomas v. EDI Specialists, Inc., 437 Mass.

(c. 151B claims survive the death of the plaintiff); Ayash v. Dana-Farber Cancer Institute, 443 Mass. 367, 392 (2005) (no charitable immunity in a c. 151B retaliation case); Conway v. Electro Switch Corp., 402 Mass. 385, 388 (1988) (front pay awards permitted); Bournewood Hosp., Inc. v. MCAD, 371 Mass. 303, 315-317 (1976) (emotional distress damages in retaliation claim); Nardone v. Patrick Motor Sales, Inc., 46 Mass. App. 452 (1999) (post-judgment interest accrue on award of attorneys fees); Walsh v. Boston University, 661 F. Supp. 2d 91 (D. Mass. 2009) (c. 151B embraces a broad interpretation of "prevailing party" and permits the award of attorneys fees based on a $15,000 stemming from a Rule 68 offer); Bandera v. City of Quincy, 220 F. Supp. 2d 26, 50 n. 36, 51 (D. Mass. 2002) (awarding damages as "costs" for postage, messenger fees, local transportation, filing fee and mediation fee, and other expenses, despite unclear documentation, and awarding attorneys fees for short legal consultation with lawyer).

[13] MCAD v. Liberty Mutual Ins. Co., 371 Mass. 186, 193-194 (1976) (relying on liberal construction provision to hold that MCAD had authority to issue a subpoena duces tecum); Bournewood Hosp., Inc. v. MCAD, 371 Mass. 303, 315-317 (1976) (MCAD permitted to award emotional distress damages in retaliation claim); Katz v. MCAD, 365 Mass. 357, 366 (1974) (MCAD entitled to issue prospective order, requiring respondent to designate future real estate advertisements as an "equal opportunity listing").

[14] Warfield v. Beth Israel Deaconess Med. Ctr., Inc., 454 Mass. 390, 398 (2009) (c. 151B claims subject to mandatory arbitration only to the extent that waiver of the usual remedial procedures are clear and mistakable).

536 (2002) (adopting reasoning of Northwest Airlines case). Given this purpose, a liberal approach will often favor a plaintiff-friendly interpretation.

Looking again to the example above, the interpretation favoring expansion of c. 151B's scope is the one defining the owner as an employee. Therefore, it is the liberal interpretation. As the liberal interpretation, the Court must test this interpretation before considering other interpretations. The Court considers the statutory language and the ordinary rules of statutory construction to determine if this interpretation is reasonable. If so, the interpretation controls, and there is no further inquiry. If that interpretation is not reasonable, then other interpretations are considered, in the order most favoring liberality.

SUMMARY OF THE PROPER ANALYSIS

The "liberal" provision requires the following mandatory and exclusive method of choosing between competing interpretations of c. 151B: [1] The purposes of c. 151B are examined, generally (e.g. elimination of discrimination) and specifically (considering the particular provision at issue); [2] proposed interpretations of c. 151B are entertained to the extent they reflect a c. 151B purpose; [3] the most liberal interpretation (one that provides for the broadest prohibitions against discrimination and greatest remedy) is examined first; [4] the most liberal interpretation is examined in light of the statutory language and other rules of construction to determine whether it is reasonable; [5] if the most liberal interpretation is reasonable, it must be adopted—even if other interpretations are equally reasonable or more so; and [6] if the most liberal interpretation is not reasonable, the court shall adopt the next most liberal interpretation that is reasonable.

Hopefully, recognition of this analysis will lead to more uniform and correct interpretations of Massachusetts' primary anti-discrimination statute. With the adoption

of a mandatory analysis, attention will shift away from preferences for a particular forum, and will more appropriately focus on the proper framing of c. 151B arguments.