Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Between:

Beatrice Nacey
Joseph Donald Rainville
Kumbayaz Dennis

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Aboriginal Affairs and Northern Development Canada

Respondent

Ruling

File Nos.: T2020/2114, T2021/2214, T2023/2414
Member: Sophie Marchildon
Date: July 23, 2014
Citation: 2014 CHRT 20

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I. Complaints

[1] The Complainants allege that the Respondent has engaged in a discriminatory practice on the basis of age, sex and/or family status, contrary to s. 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "*CHRA*").

[2] Specifically, two of the Complainants (Ms. Nacey and Mr. Rainville) allege that the Respondent engaged in a discriminatory practice in its application of s. 6(1)(c.1) of the *Indian Act* requiring them or a sibling to have been born or adopted on or after September 4, 1951, in order for the Complainants to be eligible for registration under 6(2) of the *Indian Act.*

[3] The third Complainant (Ms. Dennis) alleges that the Respondent engaged in a discriminatory practice by applying legislation that provides better treatment for male children born to Indian fathers outside marriage before April 17, 1985, than it does for female children in otherwise identical circumstances.

[4] On May 15 and June 5, 2014, pursuant to section 49 of the *CHRA,* the Canadian Human Rights Commission (Commission) referred the complaints and requested the Canadian Human Rights Tribunal (Tribunal) to institute inquiries in the matters. The Complainants' files are not joined for the purposes of a single hearing. However, given that the Commission made the same request in each of the 3 complaints and given the similarities of the subject matter of the complaints, the Commission's request will be dealt with in a single ruling.

II. Request that Tribunal proceedings be adjourned

[5] On June 16 and June 23, 2014, the Commission proposed that these complaints be adjourned pending the Federal Court's judicial review of the Tribunal decisions in *Matson/Andrews* relating to similar complaints with respect to the Respondent's application of the registration provisions of the *Indian Act*.

[6] In the *Matson* (2013 CHRT 13) and *Andrews* (2013 CHRT 21) decisions, the Tribunal dismissed the complaints, finding that the Complainants were challenging the registration provisions of the *Indian Act*, as opposed to any "service", within the meaning of s. 5 of the *CHRA*, offered by the Respondent. Applying the Federal Court of Appeal's decision in *Public Service Alliance of Canada v. Canada Revenue Agency*, 2012 FCA 7, the Tribunal found that attacks aimed at legislation, and nothing else, fall outside the scope of the *CHRA*.

[7] All parties consent to adjourn these proceedings.

III. Law and Analysis

[8] It is well established that this Tribunal is the master of its own procedure, and that it possesses significant discretion to adjourn its proceedings (*See Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14).

[9] That being said, the exercise of the Tribunal's discretion is subject to the rules of procedural fairness and natural justice, as well as the regime of the *CHRA*. The C*HRA* requires the Tribunal to institute an inquiry into complaints when requested by the Commission and to give parties a full and ample opportunity to present their case and make representations (see ss. 49(2) and 50(1) of the *CHRA*). Section 2 of the *CHRA* also expresses an overriding public interest in the elimination of discriminatory practices. And, of particular significance, s. 48.9(1) of the *CHRA* provides for proceedings before the Tribunal to be conducted as expeditiously as the requirements of natural justice allow. However, as master of its own procedure, the Tribunal may, nonetheless, adjourn its proceedings where appropriate in its discretion (See *Léger v. Canadian Railways* (1999) C.H.R.D. No. 6 (CHRT), at para. 4; *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at para. 15).

[10] The complaints here resemble those that were at issue in the *Matson* and *Andrews* cases, insofar as they allege the Respondent engaged in a discriminatory practice when it applied the registration provisions of the *Indian Act*. If the Tribunal's reasoning from the *Matson* and

Andrews decisions were to be applied to the complaints here, the result would presumably be the same: the complaints would be dismissed. As mentioned above, the Tribunal dismissed those complaints because it found they were challenging the registration provisions of the *Indian Act*, as opposed to any "service", within the meaning of s. 5 of the *CHRA*, offered by the Respondent. The Tribunal found that attacks aimed at legislation, and nothing else, fall outside the scope of the *CHRA*.

[11] In the present cases, the Commission argues the *CHRA* allows for complaints that directly challenge a government department's application of mandatory legislation. The Respondent contends that type of complaint falls outside the jurisdiction of *CHRA*. The Tribunal provided its views on the issue in *Matson* and *Andrews*. The issue has now been brought to the Federal Court on judicial review. Therefore, given the fact that the same question is currently before the Federal Court, hearing the complaints at this time would not provide a full answer to the issues they raise. Rather, in my view, in terms of efficiency and fairness, the parties and the Tribunal would benefit from further clarification of these issues by the Federal Court.

[12] The Tribunal has already taken this approach with another set of complaints that raise similar allegations regarding Veterans Affairs Canada's application of the *Canadian Forces Members and Veterans Reestablishment and Compensation Act* (Tribunal Files T1898/12812 to T1901/13112). On consent of all parties, those complaints have been adjourned pending the resolution of the *Matson* judicial review.

[13] Similar to the cases cited above, the Complainants in the present matters have provided their consent to an adjournment.

[14] In addition, the Tribunal has recently adjourned another group of complaints in *Renaud, Sutton and Morigeau v. Aboriginal Affairs and Northern Development Canada*, which sought, as in the present cases, to challenge the registration provisions of the *Indian Act.* The Tribunal, at Para. 23, stated the following, that I find applicable in the present matters:

> I recognize that every case has its own particularities since we are dealing with unique individuals and with different facts and issues. I also recognize the significant role that elders play in our society and the importance of their right to be heard in exercising this role. I also carefully considered the impacts on the Complainants in adjourning their cases. However, I find those considerations are outweighed by the potential additional delays and complexities that would be created if the Tribunal were to proceed with these complaints without further clarification from the Federal Court. (para. 23)

[15] Having considered the various interests and needs of the parties and the Tribunal, I grant the Commission's request to adjourn these proceedings.

IV. Ruling

[16] For the reasons above, Tribunal files T2020/2114, T2021/2214 and T2023/2414 are adjourned *sine die* with the following conditions:

> (1) The Commission shall keep the Tribunal apprised of the status of judicial review applications/appeals in the *Matson*/*Andrews* matters, including any Reasons for Judgment;
>
> (2) The issue of any further adjournment/abeyance can be revisited and dealt with after the Federal Court decision in the *Matson/Andrews* judicial review application is rendered.
>
> (3) Any party or the Tribunal may request the holding of a Case Management Conference Call after the release of Reasons for Judgment in any of the judicial reviews/appeals referred to in clause (1) in order to re-assess the adjournment/abeyance status herein.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
July 23, 2014