

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 4

Date: February 3, 2021

File Nos.: T2525/8220, T2540/9720, T2542/9820

Between:

Denny Bilac

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

N/C Tractor Services Inc., Arthur Currie, and Shona Abby

Respondents

Ruling

Member: Colleen Harrington

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I. Introduction

[1] On September 28, 2020, the Canadian Human Rights Commission (Commission) wrote to the Chairperson of the Canadian Human Rights Tribunal (CHRT or Tribunal) requesting that he institute an inquiry into the complaints of Denny Bilac against N/C Tractor Services Inc. (N/C Tractor), Arthur Currie, and Shona Abby.

[2] The Commission referred the three complaints to the Tribunal separately, pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act*, RSC 1985, c.H-6 (*CHRA* or the *Act*). The Commission then made a Motion asking the Tribunal to join the complaints so they can be heard together in a single inquiry. The Complainant agrees with the Commission's Motion, as does one of the individual Respondents, Ms. Abby. Mr. Currie, who is the president of N/C Tractor has thus far refused to participate in the Tribunal's process.

II. Decision

[3] I agree to join all three complaints, so that they may be heard together in a single inquiry.

III. Commission's Motion to Join the Complaints

[4] The Commission asks the Tribunal to exercise its discretion to hold a single inquiry because the allegations in each complaint concern facts that are interconnected. It says this will likely give rise to common issues of law and potential remedies.

[5] The Commission argues that there is no prejudice to the Respondents in having a single inquiry, as the complaints are at the beginning of the Tribunal's process and joining them will not cause any delay to the parties.

[6] The Commission submits that it is in the interests of justice to avoid a multiplicity of proceedings and inconsistent rulings.

[7] During a Case Management Conference Call (CMCC) convened by the Tribunal on December 16, 2020, the Complainant and Ms. Abby both agreed that it would be a more efficient use of time and resources to hold one hearing as opposed to three.

[8] With respect to the Respondents Mr. Currie and N/C Tractor, the Commission says that by refusing to attend the CMCC, and by failing to provide updated contact information, they have waived their rights to respond to the Commission's Motion and to participate in the Tribunal's process.

[9] The Commission says the Tribunal can continue with its process even if these two Respondents refuse to participate. Subsection 48.9(1) of the *Act* states that the Tribunal's proceedings "shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow." To ensure that hearings may proceed accordingly, the *Act* permits the Tribunal to decide any procedural or evidentiary questions that arise during the course of its inquiry (s.50(3)(e)). It is also well accepted that the Tribunal is the master of its own proceedings (*Constantinescu v. Correctional Service Canada*, 2018 CHRT 10 at paras 10-15).

IV. Mr. Currie's and N/C Tractor's Lack of Participation

[10] Upon referring these complaints to the Tribunal, the Commission provided the contact information for all three Respondents. It had obtained their information during the complaint screening process. The Commission advised that Mr. Currie is the President of N/C Tractor and provided the same address for both Respondents.

[11] The Tribunal sent Mr. Currie a letter to the address provided by the Commission on October 20, 2020, using Canada Post's Xpresspost service, which required a signature upon delivery. The letter was returned to the Tribunal on November 2, 2020. According to its online tracking service, Canada Post indicated on October 23, 2020: "Recipient not located at address provided. Item being returned to sender." Further correspondence sent to the same address was returned to the Tribunal on November 9, 2020, with a notation from Canada Post saying it was being returned for the following reason: "Moved/Unknown".

[12] On November 16, 2020, one of the Tribunal's Registry Officers called Mr. Currie at the telephone number provided by the Commission and left a voicemail message asking him to phone her back to confirm his mailing address or to provide the Tribunal with an email address. As he did not respond to this message, the Registry Officer called again on November 24, 2020. Mr. Currie spoke with the Registry Officer and advised that his company had shut down and that he had retained legal counsel to deal with Mr. Bilac's human rights complaints. However, he would not provide the Tribunal with a mailing address or an email address. He also refused to provide the name of his legal representative or their contact information. Mr. Currie took down the Registry Officer's contact information and said his lawyer would contact the Tribunal. The Tribunal was not provided with any details about when N/C Tractor allegedly ceased operations.

[13] On December 14, 2020, the Commission emailed the Tribunal to advise that the letters it had sent by mail to Mr. Currie and N/C Tractor since the complaints were referred to the Tribunal had all been returned as well. The Commission advised that it did not have any other contact information for these two Respondents.

[14] Once the date and time for the CMCC were decided upon, the Tribunal's Registry Officer called Mr. Currie on December 14, 2020 and left a voicemail providing him with the date, the time, and the toll-free call-in information to participate in the December 16th call. Mr. Currie did not join the CMCC. During the call, the Commission advised that Mr. Currie was similarly uncooperative when the Commission was dealing with the complaints, prior to their referral to the Tribunal. Ms. Abby advised during the CMCC that she is not currently working for N/C Tractor.

[15] On February 1, 2021, the Commission advised the Tribunal that its correspondence to Mr. Currie and N/C Tractor containing its Motion to join these complaints was returned to it by Canada Post on January 22, 2021, because Mr. Currie could not be located at the address provided.

V. Analysis

A. Proceeding Without Notice to Mr. Currie and N/C Tractor Services Inc.

[16] I agree with the Commission that, by refusing to attend the CMCC in December, and refusing to provide updated contact information, Mr. Currie and N/C Tractor have waived their rights to respond to the Commission's Motion.

[17] The Tribunal owes a duty of procedural fairness to all parties who appear before it (ss.48.9(1) *CHRA*). The Tribunal has enacted *Rules of Procedure (Rules)* to ensure that: (a) all parties to an inquiry have a full and ample opportunity to be heard; (b) arguments and evidence are disclosed and presented in a timely and efficient manner; and (c) all proceedings before the Tribunal are conducted as informally and expeditiously as possible (Rule 1(1)). The *Rules* are to be liberally applied by the Tribunal in each case, and the Tribunal may dispense with compliance with any Rule where to do so would advance the purposes set out in Rule 1(1) (Rules 1(2) and 1(4)).

[18] All written communications made under the *Rules* are to be served on all parties and filed with the Tribunal's Registry unless otherwise stipulated (Rule 2). Upon receiving a Notice of Motion from a party, the Tribunal is to ensure that the other parties are granted an opportunity to respond to the Motion (Rule 3(2)(a)).

[19] There are many methods by which service upon a party may be accomplished under the *Rules*, including by facsimile, registered mail, ordinary mail, courier, in-person delivery, or service by a Bailiff or process server (Rule 2(2)). The Tribunal also regularly agrees that service by email is acceptable. There is no obligation on a party to try every possible method of service. In this case, the only methods available to the Commission to serve Mr. Currie and N/C Tractor involve the address from which the Commission's and Tribunal's mail has been returned as undeliverable. No fax number is available and Mr. Currie has refused to provide any contact information, including an email address.

[20] In the normal course of the Tribunal's proceedings, Mr. Currie would have received the Commission's Motion and had the opportunity to respond to it. In this case, however, I conclude that his behavior thus far amounts to a deliberate evasion of service.

[21] Mr. Bilac filed his human rights complaint against N/C Tractor in November of 2019. The complaint was in the Commission's screening process until it was referred to the Tribunal for an inquiry a year later, in September of 2020. Mr. Currie is clearly aware of these complaints and knows that they are currently before the Tribunal, as he told the Tribunal's Registry Officer that he had retained legal counsel to help him respond to them. However, given his refusal to provide any contact information to the Tribunal upon request, there is effectively no way to serve him with any documents at this time.

[22] The Tribunal provided Mr. Currie with the necessary information to participate in the CMCC in December and he failed to do so.

[23] Tribunal case law suggests that the Tribunal's record, which would include the CMCC summary, may be used to demonstrate a respondent's refusal to participate in its proceedings (*Warman v Warman*, 2005 CHRT 36 (CanLII) at paras 2-5; *Warman v Harrison*, 2006 CHRT 30 (CanLII) at para 6).

[24] The Federal Court has affirmed that, "any person seeking to evade service would be implicitly acknowledging the legitimacy of the proceedings being brought against him or her and thereby seeking to frustrate the administration and proper course of justice." (*Johnson v Warkworth Institution Disciplinary Court (Independent Chairperson)*, 2013 FC 905 (CanLII) at para 8). The Federal Court of Appeal upheld this decision and reiterated that avoiding service is not a legitimate litigation strategy (2014 FCA 206 (CanLII) at para 12).

[25] I am of the view that this is an appropriate case to exercise my discretion and dispense with the requirement set out in the *Rules* that the Commission's Motion be served on all parties. It is in the interests of justice that the Tribunal decide this Motion early in the proceedings, so the parties know that they are only required to file one set of particulars rather than three. This accords with the Tribunal's obligation to proceed as expeditiously as the requirements of natural justice and the rules of procedure allow.

[26] There is also no obvious prejudice to Mr. Currie or N/C Tractor in failing to respond to this particular Motion. To the contrary, as discussed below, it would appear that all three Respondents stand to benefit from the order sought by the Commission to join the complaints in a single hearing.

[27] With respect to the Commission's argument that Mr. Currie and N/C Tractor have waived their right to participate in the Tribunal's process generally, I do not make such a finding at this time. Section 50(1) of the Act states:

After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.

[28] To conclude at this early stage that these Respondents have waived their future rights to participate in the Tribunal process at large is unnecessarily far-reaching. While Mr. Currie may have adopted an unfortunate and illegitimate litigation strategy of avoidance thus far, it is my hope that he will change his approach as the matter proceeds to a hearing.

[29] With respect to the present Ruling, a Tribunal Registry Officer will call Mr. Currie at the number we have used thus far to advise that the Tribunal has important correspondence to provide to him and ask him to provide us with an email address, a physical or mailing address, and/or a fax number by a certain date. The Tribunal will keep track of its efforts accordingly.

[30] If Mr. Currie declines to provide further contact information in response to this Ruling, however, the parties will not be required to serve their Statements of Particulars on Mr. Currie or N/C Tractor, in order that these complaints may continue to proceed efficiently and in fairness to the other parties.

B. Joining the Complaints into a Single Inquiry

[31] The Tribunal accepts that it has the discretion to deal with complaints referred to it by the Commission in a single inquiry (ss. 48.9(1) *CHRA* and s. 50 *CHRA*; see also: *Karas v. Canadian Blood Services and Health Canada*, 2020 CHRT 12 (CanLII) [*Karas*]; *Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 (CHRT) [*Lattey*]).

[32] As the Commission noted in its submissions, in order to decide whether to consolidate, or join, complaints into a single inquiry, the Tribunal must balance certain factors, including:

1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of witnesses, the repetition of evidence, and the risk of the Tribunal reaching inconsistent findings;
2. The prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent and the potential for confusing evidence before the Tribunal that does not necessarily concern each respondent;
3. Whether there are common issues of fact or law.

(*Lattey* at para 13; reaffirmed in *Karas* at para 15)

[33] The Tribunal considers these factors to be “a useful way to evaluate whether it is in the public interest to proceed with a single inquiry or separate inquiries” (*Gullason and Attaran v. Tri-agency Institutional Programs Secretariat*, 2018 CHRT 21 (CanLII) at para 50). It is accepted that these factors are not exhaustive and the Tribunal should consider what factors are important in each particular case (*Karas* at para 17).

[34] The Commission points out that the allegations in the present complaints concern the same facts. Indeed, when filing his complaint with the Commission, Mr. Bilac filled out only one complaint form, which outlined interconnected allegations against the three Respondents. Specifically, he alleges that the Respondents discriminated against him on the basis of his gender identity and/or expression by harassing him, contrary to s.14 of the *CHRA*. The complaint form describes alleged discriminatory comments and behaviours by the personal Respondents Mr. Currie and Ms. Abby while he was employed at N/C Tractor and its predecessor company called Eden Bank Trading Ltd.

[35] I agree with the Commission that, based on the interconnected facts, which will likely give rise to common issues of law and potential remedies, it is in the interests of justice to avoid more than one proceeding and to hear all three complaints together in a single inquiry.

[36] I also agree that there is no obvious prejudice to any of the Respondents in holding a single inquiry into all three complaints. The complaints are at the beginning of the

Tribunal's process and can be joined without causing a delay to any party. Both Mr. Bilac and Ms. Abby agree that proceeding this way will actually save them time and resources. They will only have to testify in one hearing, as opposed to three.

[37] I am of the view that holding a single inquiry into these three complaints is in the public interest in that the Tribunal will not have to assess the same evidence or perform its legal analyses more than once, and so there is no risk of inconsistent findings or rulings. Also, the Commission, as a separate party representing the public interest, will save resources and time by only having to participate in one proceeding involving these complaints.

[38] Proceeding with a single inquiry will permit the Tribunal to proceed as expeditiously as possible given the requirements of fairness and natural justice.

[39] I note that, despite the fact that the three complaints will be heard together, each Respondent will still be able to call their own evidence, and cross examine both the Complainant and the other Respondents. If a finding of discrimination is made against any of the Respondents, the remedies awarded will reflect the liability of each Respondent based on the findings of fact and law made by the Tribunal following the hearing.

VI. Order

[40] I hereby order:

1. That the requirement for service of this Motion upon the Respondents Arthur Currie and N/C Tractor Services Inc. is waived;
2. That the three complaints of Denny Bilac, against N/C Tractor Services Inc., Arthur Currie, and Shona Abby, be joined so they may be heard in a single inquiry;
3. That the Tribunal's Registry Office will call Mr. Currie at the telephone number on file and advise him (including, if necessary, by voicemail) that the Tribunal has important correspondence to provide to him, which includes this Ruling and instructions for participating in the next steps in this inquiry. The Registry will advise Mr. Currie that he must provide at least one of the following to the Tribunal by February 12, 2021: An email address that he regularly checks and responds to;

- i. A facsimile number that he regularly checks and responds to;
 - ii. A mailing address where he regularly receives mail;
 - iii. A physical address at which he resides and where he may be served by courier or a process server;
 - iv. The name and contact information for legal counsel representing him in this matter.
4. If Mr. Currie fails to provide the above information by February 12, 2021 the other parties are not required to serve him or N/C Tractor Services Inc. with their Statements of Particulars which are due on the following dates:
- a. Commission by February 25, 2021;
 - b. Complainant by March 8, 2021;
 - c. Respondents (Shona Abby, Arthur Currie and N/C Tractor Services Inc.) by March 29, 2021;
 - d. Reply by Commission and Complainant by April 12, 2021.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
February 3, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2525/8220, T2540/9720, T2542/9820

Style of Cause: Bilac v. N/C Tractor Services Inc., Arthur Currie and Shona Abby

Ruling of the Tribunal Dated: February 3, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Brittany Tovee, for the Canadian Human Rights Commission