

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 21

Date: June 18, 2021

File No.: T2565/12220

Between:

Shannon Rivard

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Nak'azdli Whut'en First Nation

Respondent

Decision

Member: Jennifer Khurana

I. OVERVIEW

[1] Shannon Rivard, the complainant, has not met Tribunal deadlines to proceed with her complaint. The Tribunal has attempted to contact her on multiple occasions, but she has not responded to any of the Tribunal's communications since she declined to participate in mediation. The Tribunal warned Ms. Rivard that if she did not respond, her complaint could be dismissed as abandoned.

[2] Nak'azdli Whut'en First Nation (the "Nation"), the respondent, asks that the Tribunal dismiss Ms. Rivard's complaint. It argues that Ms. Rivard has not shown any intention of proceeding with her complaint. The Canadian Human Rights Commission ("the Commission") does not object to the Nation's request. Ms. Rivard did not respond to the Nation's request.

II. DECISION

[3] I am allowing the Nation's request. Ms. Rivard's complaint is dismissed as abandoned. I am satisfied that Ms. Rivard received notice of the steps she needed to take to move forward with her complaint as well as the consequences for failing to do so. The Tribunal advised Ms. Rivard that her complaint would be dismissed as abandoned if she did not respond. She has not complied with the Tribunal's directions or responded to the Nation's request and she has not provided any justification for her failure to do so.

III. ISSUE

[4] Should Ms. Rivard's complaint be dismissed as abandoned because she has not complied with the Tribunal's deadlines or otherwise responded to any Tribunal communications since February 11, 2021?

IV. FACTUAL BACKGROUND

[5] I have set out below the steps that the Tribunal has taken to contact Ms. Rivard because they are relevant to my reasons for dismissing the complaint.

[6] The Commission referred Ms. Rivard's complaint to the Tribunal on November 4, 2020. The Tribunal asked the parties to participate in voluntary mediation. Ms. Rivard agreed. She later changed her mind and on February 11, 2021, forwarded an email she had sent to the Commission indicating that after discussing her case with her spouse, she no longer wanted to participate in mediation. The mediation was cancelled, and the Tribunal moved the complaint forward in preparation of the hearing. The Tribunal has not heard from Ms. Rivard since February 11, 2021.

[7] On February 12, 2021, the Tribunal sent a letter to the parties that included deadlines for filing Statements of Particulars ("SOPs") and disclosure. Ms. Rivard's materials were due March 22nd. She did not meet the deadline or otherwise communicate with the Tribunal or the other parties.

[8] The Tribunal sent Ms. Rivard a reminder by email and telephoned her twice on March 23, 2021. The calls were answered but there was no response. The Tribunal followed up again on March 29, 2021 in writing and told Ms. Rivard that if she needed more time, she could send a request for an extension to the Tribunal. Ms. Rivard did not respond. The Tribunal again followed up by telephone on March 30th and the call was picked up, but there was no response.

[9] The Commission also made several attempts to contact Ms. Rivard both before and after the March 22nd due date. Counsel for the Commission reached out to Ms. Rivard on several occasions, offering to answer questions about the Tribunal process. The Commission did not receive a response to its numerous attempts to reach Ms. Rivard by email, phone/voicemail, and courier.

[10] On March 31, 2021, the Tribunal sent Ms. Rivard a letter by email, asking her to confirm whether she intended to pursue her complaint. This email included a warning that a

failure to respond could result in her complaint being dismissed as abandoned. Ms. Rivard did not respond.

[11] On March 31, 2021 the Commission sent Ms. Rivard a letter by email and by courier, attaching a copy of the Tribunal correspondence of the same date. Ms. Rivard's spouse signed the confirmation of receipt. Ms. Rivard did not respond to the Commission.

[12] The Tribunal called Ms. Rivard on April 6th and left a voicemail, requesting a response to its March 31st letter. It tried to reach Ms. Rivard again by telephone on April 7th and 8th, and left messages both with Ms. Rivard's spouse and on her voicemail. Ms. Rivard did not respond.

[13] On April 15, 2021, the Tribunal contacted the parties by email, and advised Ms. Rivard that for her complaint to move forward in the Tribunal process, she would need to file particulars or otherwise communicate with the Tribunal. It again warned that failure to respond could result in the dismissal of her complaint as abandoned. The Tribunal also told the parties that it would hold a case management conference call ("CMCC") to discuss next steps because of Ms. Rivard's failure to communicate or respect the Tribunal's deadlines.

[14] On April 20, 2021, the Commission sent a letter to Ms. Rivard, attaching the Tribunal's April 15th correspondence regarding the scheduling of the CMCC. It received confirmation that the letter was delivered, received and signed for by Ms. Rivard's spouse. It also left voicemail messages for Ms. Rivard but did not hear back.

[15] On April 21, 2021, the Tribunal asked the parties if they had any other information that would help facilitate contact with Ms. Rivard. The Commission responded that it did not have any other contact information other than what it previously provided to the Tribunal. The Nation did not have any other contact information either, as it later confirmed during the CMCC.

[16] Ms. Rivard did not respond to emails from the Tribunal asking the parties for their availability so that it could schedule the CMCC. The Tribunal sent all parties, including Ms. Rivard, the call-in details for the CMCC on April 21, 2021. On May 5, 2021, the Tribunal also phoned Ms. Rivard at both numbers it had on file. It left a voicemail message, reminding

her about the CMCC and again providing the call-in details. At the other number the call was picked up, but no one responded to the Registry Officer.

[17] On May 6, 2021, the Tribunal held the CMCC. Ms. Rivard did not attend or otherwise contact the Tribunal. The Tribunal sent Ms. Rivard the summary of the call by mail, email and courier. The summary explained that the Nation requested that the Tribunal dismiss the complaint and set a deadline of May 21, 2021 for the parties to provide submissions on whether the complaint should be dismissed as abandoned. It also gave the parties an extra week to respond to any submissions they received from each other.

[18] The Nation filed submissions asking the Tribunal to immediately dismiss Ms. Rivard's complaint as abandoned. It argued that she has demonstrated no intention to advance her case and no regard for the other parties to this complaint. It noted that Ms. Rivard repeatedly missed deadlines, did not communicate with the Tribunal or respond to its directions, did not attend the CMCC held to address her non-compliance, and did not provide an explanation for her non-compliance.

[19] The Commission did not object to the dismissal request but asked that Ms. Rivard be given one final chance to file her SOP. The Commission suggested that the Tribunal send Ms. Rivard a final communication by all means possible, clearly noting that if she did not send her SOP within three weeks, her complaint would be dismissed as abandoned.

[20] On May 21, 2021, the Tribunal called Ms. Rivard and referred to the Nation's request to have the complaint dismissed as abandoned. The call was picked up, and the Registry Officer asked that Ms. Rivard check her emails about the request for dismissal, but no one responded. The Tribunal also sent a reminder email that same day.

[21] On May 25, 2021, the Tribunal sent Ms. Rivard another communication, by email, post and courier, clearly stating the consequences of a failure to respond, as suggested by the Commission. The Tribunal offered to provide more information about its process and to respond to any accommodation requests but noted that it could not do so in the absence of a response from Ms. Rivard. It gave Ms. Rivard an additional two weeks to respond, noting that in the absence of any communication by June 8, 2021, her complaint would be dismissed as abandoned. Ms. Rivard did not respond.

V. REASONS

[22] Tribunal proceedings should be conducted as expeditiously as the requirements of natural justice allow (s. 48.9(1) of the *Canadian Human Rights Act* (“CHRA”) and Rule 1(1)(c) of the Tribunal Rules of Procedure). The Tribunal has the discretion to control its process and must guard against abuse and ensure that parties to its proceedings respect its rules and deadlines. See, for example, *Labelle v. Rogers Communications Inc.*, 2012 CHRT 4 at para 83 and *Johnston v. Canadian Armed Forces*, 2007 CHRT 42 at para 31.

[23] Deadlines are peremptory or absolute but the Tribunal has the discretion to grant an extension (Rule 1(5)). The Tribunal must be accessible to complainants, including unrepresented ones. All parties have a full and ample opportunity to be heard (Rule 1(1)(a)), but this is not to be to the detriment of the other parties or the Tribunal. The Tribunal owes a duty of fairness to all parties. See *Mattice v. Westower Communications Ltd.*, 2014 CHRT 32 [*Mattice*] at para 51.

[24] In the absence of any response or indication from Ms. Rivard that she wishes to proceed with her complaint, I find that this matter should be dismissed as abandoned.

[25] I am satisfied that Ms. Rivard received notice of the communications from the Tribunal. The Tribunal has tried to reach Ms. Rivard by email, by post and by courier at the addresses provided by the Commission. It has also tried to reach her by telephone at both telephone numbers provided to the Tribunal. The calls went through, but no one responded. In other cases, the Tribunal left messages on a voicemail identified as belonging to Ms. Rivard. It has sent hard copies of communications by post to Ms. Rivard and these were not returned as undeliverable. Most communications, including those warning about the consequences of failing to respond, were also sent by courier, and were successfully delivered and signed for by the complainant’s spouse who was aware of her case, as indicated by Ms. Rivard in her February 11th email. Emails were not returned as undeliverable and were sent to the same email address Ms. Rivard used to withdraw her consent to mediate on February 11th.

[26] I have no information before me to suggest that Ms. Rivard's failure to respond to the Tribunal's communications since February 2021 is due to a medical reason or another justifiable reason.

[27] The Tribunal also warned Ms. Rivard on more than one occasion that her complaint could be dismissed as abandoned if she did not respond. It has offered to provide her with accommodation, if required. It extended deadlines to allow her more time and offered to explain the Tribunal process and its requirements to her.

[28] There are very few Tribunal decisions that have dismissed complaints because of a complainant's failure to participate in proceedings or to respect the Tribunal's deadlines.

[29] Dismissing complaints at an early stage of proceedings has serious consequences for a complainant's ability to proceed with their complaint and for their ability to access justice. Complainants often wait several years to get before the Tribunal after their initial complaint to the Commission, investigation, and referral to the Tribunal. In Ms. Rivard's case, the events surrounding her complaint date back to 2017.

[30] But that also means that the Nation has been involved in litigation of this complaint since 2018. The complaint was referred to the Tribunal in November 2020 and all parties are entitled to the timely and fair resolution of this complaint.

[31] Ms. Rivard is unrepresented and legal processes can be difficult and complicated. The Tribunal previously explained that it can provide information about how the process works and what she needs to do to move forward with her complaint. This is part of the Tribunal's duty to the parties who come before it and informs my responsibility to ensure a fair hearing process that is accessible to all. The Tribunal can also consider any requests for extension or accommodation from any of the parties. But it is impossible for the Tribunal to do so in the absence of any communication from Ms. Rivard.

[32] The Nation notes that the Tribunal has gone to great lengths to engage with Ms. Rivard and has provided many chances for her to participate in the process. The Commission also states that the Tribunal has taken the appropriate steps to contact Ms. Rivard by multiple means. The Commission has done the same, without success.

[33] I acknowledge that two of the cases relied on by the Nation in support of its request involve very different timelines and circumstances. In *Mattice* the Tribunal waited 2 years to get to a mediation after Mr. Mattice missed his deadline for filing mediation materials 5 times. The Tribunal eventually dismissed the complaint six months after the original deadline that the complainant was given to file his SOP. But this dismissal came roughly three years after the Commission referred the complaint to the Tribunal. The Tribunal found that Mr. Mattice showed wholesale disregard for the Tribunal's time limits and that he abused its process.

[34] In *Mangat v. Canadian Air Transport Security Authority*, 2019 CHRT 25 [*Mangat*], the Tribunal dismissed the complaint because Mr. Mangat missed all deadlines to file his SOP and disclosure materials without notice or explanation. In total, the complaint had been before the Tribunal for 5 years, including 4 years spent on and off in mediation.

[35] In contrast, Ms. Rivard's complaint has been before the Tribunal for a total of a matter of months, not years.

[36] But *Mattice* and *Mangat* are also distinguishable in that the complainants did respond more regularly, albeit sporadically, and both participated in a mediation process the Tribunal chose to extend over years. Ms. Rivard has not communicated with the Tribunal at all since she withdrew her consent to mediate. In *Mangat*, the Tribunal was also aware of the complainant's medical condition and took a flexible approach to accommodate his needs.

[37] The Tribunal must ensure that its process is accessible to all parties, including those who are unrepresented or who may face challenges understanding and navigating legal processes.

[38] But being mindful of the challenges faced by self-represented litigants does not mean that the Tribunal must wait years before addressing a complainant's lack of participation in the Tribunal process. In my view, the Tribunal's duty to deal with complaints fairly and expeditiously does not favour allowing complaints to languish for years. Further, in the absence of any justification from the complainant, failing to address a party's non-compliance does not promote respect for the Tribunal's process, its deadlines, the other parties, or the public interest.

[39] The Nation is entitled to have this complaint addressed in a timely way. As the respondent submits, these delays have imposed costs on the Nation, the Commission and the Tribunal.

[40] There is a real financial cost for every delay, every missed deadline and every time the parties and the Tribunal must address a matter a second, third and fourth time (*Mattice* at para 52). There is also a cost to the Tribunal and to other complainants and respondents who are waiting for the Tribunal to hear their cases. Delays affect the parties, the Tribunal, taxpayers, and other litigants (*Chisholm v. Halifax Employers Association*, 2019 CHRT 38 at para 35).

VI. ORDER

[41] The Nation's request to dismiss the complaint is allowed. Ms. Rivard's complaint is dismissed as abandoned.

[42] The Registry will send a letter to the parties confirming that this file has been closed.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
June 18, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2565/12220

Style of Cause: Shannon Rivard v. Nak'azdli Whut'en First Nation

Decision of the Tribunal Dated: June 18, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Sasha Hart, for the Canadian Human Rights Commission à

Scott McCann, for the Respondent