Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2022 CHRT 20
Date: June 13, 2022
File No.: T2665/4121

Between:

Keith Leonard

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian American Transportation Inc.

Respondent

- and -

Penner International Inc.

Prospective Respondent

Ruling

Member: Gabriel Gaudreault

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I. Background of Complaint

[1] This is a ruling of the Canadian Human Rights Tribunal (the "Tribunal") on a motion filed by Keith Leonard (the "Complainant") requesting the addition of Penner International Inc. ("Penner International" or the "Prospective Respondent") as a respondent to the inquiry.

[2] The Tribunal currently has before it Mr. Leonard's complaint under section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the "CHRA"), alleging that he was discriminated against in the course of his employment and on the ground of his family status by Canadian American Transportation Inc. (the "Respondent" or "CAT").

[3] On September 27, 2021, the Complainant filed a notice of motion requesting that Penner International be added as a respondent. On October 26, 2021, a case management conference call was held between the Tribunal and counsel for the Complainant, for CAT and for the Canadian Human Rights Commission (the "Commission") to discuss the motion.

[4] It was decided that the motion would be dealt with in writing, and the Tribunal issued various directions to that end, including a direction to serve the motion on the Prospective Respondent; is also established time limits for filing written submissions. All the directions were added to the conference call summary and distributed to the parties on October 29, 2021.

[5] As requested, the Tribunal received the Complainant's written submissions and the supporting documents for his motion on November 5, 2021. The Commission, which is not taking part in the hearing but is taking part in case management, filed brief written submissions on December 9, 2021.

[6] On the same day, CAT filed its written submissions jointly with the Prospective Respondent, Penner International, and also with SLH Transport Inc. ("SLH"). The Complainant filed a brief reply on December 15, 2021.

[7] The Tribunal read the parties' submissions and noted that the Respondent, the Prospective Respondent and SLH had filed submissions that went beyond the scope of the conclusions sought by the Complainant.

[8] In their submissions, they agreed to have Penner International added as a respondent, but asked to have CAT removed as the respondent to the inquiry. They also formally objected to having SLH added as a respondent.

[9] Following these unexpected additions, the Tribunal wrote to the parties to ask for additional submissions on this matter. The Tribunal's directions were sent to the parties on January 27, 2022, and entered into its official record.

[10] Suffice it to say that the Tribunal sought to resolve the issues related to identifying the correct respondent or respondents once and for all without having to deal with future, additional motions on this issue. It was therefore much more efficient to address the issue as a whole (subsection 48.9(1) of the CHRA).

[11] Despite the Tribunal's request, CAT, Penner International and SLH did not file additional submissions. The Complainant did decide to file additional submissions, and did so on February 24, 2022. CAT, Penner International and SLH filed a brief reply on March 3, 2022.

II. Tribunal's Ruling

[12] With all of the parties' submissions and supporting documents before it, the Tribunal is now in a position to issue its ruling.

[13] For the reasons that follow, the Tribunal will add Penner International as a respondent, but refuses to remove CAT as a respondent to the inquiry.

III. Issues

[14] There are two issues:

(1) First, should the Tribunal add Penner International as a respondent to the inquiry?

(2) Second, should the Tribunal remove CAT as a respondent to the inquiry?

IV. Parties' Positions

A. Complainant

[15] The Complainant is requesting that Penner International be added as a respondent. Penner International is the current corporate name of SLH, Mr. Leonard's former employer.

[16] In support of his request, the Complainant submits that he filed his complaint to the Commission against two different respondents, namely, CAT and SLH, the latter being a federal company and a subsidiary of CAT. He states that he had a contract of employment with SLH, which was his immediate employer and paid his wages.

[17] Mr. Leonard states that the Commission removed SLH from his complaint of its own volition, without advance notice or valid reasons. Thus, in his opinion, were it not for that error, SLH would have been a respondent in the Tribunal's inquiry.

[18] He adds that a lawyer for the Commission provided some clarifications on this question: SLH used to be owned by Sears Department Stores, a business that went bankrupt, and this may have been the reason why SLH was removed as a respondent during the investigation process. The Complainant notes that this could not have been the case since, at the time of the Commission's investigation, SLH was owned by CAT.

[19] The Complainant adds that SLH is currently inactive and has been amalgamated into Penner International, which has assumed all of SLH's rights and responsibilities.

[20] In his reply, Mr. Leonard points out that CAT, Penner International and SLH did not expressly object to adding Penner International as a respondent, but actually agreed to it.

[21] He also took the opportunity to revisit the case law and the principles of law in respect of adding parties before the Tribunal. It is not necessary to go over them at this stage since they are consistent with the principles that the Tribunal adopts in section V, Legal Framework.

[22] The Complainant notes that it is clear from reading the statements of particulars that SLH was his employer and that it engaged in the alleged discriminatory practices. He adds

that he should not have to pay for the Commission's error and that it would be unfair to ask him to file a new complaint against SLH with the Commission. Not only would he have to go through another investigation process, but, in addition, the one-year limitation period set out in the CHRA has expired. Mr. Leonard also claims that the prejudice caused to SLH can be mitigated by giving it the opportunity to file its own statement of particulars.

[23] Finally, he notes that SLH and Penner International are now the same entity operating under the latter's name. Although he is of the opinion that there is no indication that SLH's name is no longer valid or has stopped being a registered name, he submits that it would be appropriate to add the company to the inquiry under its correct name, Penner International Inc.

B. CAT, Penner International and SLH

[24] CAT, Penner International and SLH provided joint submissions filed by the same law firm. Although the Tribunal did not specifically invite SLH to make submissions, SLH did so together with the other companies.

[25] CAT, Penner International and SLH consent to Penner International being added as a respondent to the inquiry. However, they ask that CAT be removed as a respondent and formally object to SLH being added as one.

[26] They allege that only the parties that had an employment relationship with Mr. Leonard should be included as respondents to the inquiry. According to them, it is enough to look at the corporate history of the businesses involved to identify the correct respondent to the complaint.

[27] They specify that, before 2017, the Complainant was employed by SLH, which was a subsidiary of Sears. When Sears went bankrupt, numbered company 8507597 Canada Inc. bought SLH's assets. In 2018, 8507597 Canada Inc. decided to change its name to SLH.

[28] They allege that, throughout his entire period of employment, the Complainant was always an employee of, and was paid by, SLH; his contract of employment was never

transferred to CAT. They therefore believe that the Complainant never had an employment relationship with CAT, which justifies it being removed as a respondent.

[29] CAT, Penner International and SLH explain that SLH was amalgamated into Penner International on January 31, 2020. Thus, they agree to having Penner International added as a respondent to the Tribunal's inquiry. However, since SLH ceased to exist as a business as a result of the amalgamation, it cannot be added as a respondent.

C. Commission

[30] The Commission did not take a stand on Mr. Leonard's motion specifically. It should also be noted that it will not take part in the Tribunal's hearing and is limiting its participation to case management.

[31] The Commission did, however, in order to help the Tribunal, make some comments on the law applicable to Mr. Leonard's motion. It is not necessary to go over these comments here as they are consistent with the law that the Tribunal applies in section V of its decision, Legal Framework.

[32] Lastly, despite the Tribunal's request, the Commission did not make any submissions regarding the removal of CAT as a respondent.

D. Complainant's Additional Submissions

[33] As mentioned previously, the Tribunal asked the parties for additional submissions regarding the removal of CAT as a respondent to the inquiry.

[34] While CAT, Penner International and SLH made the decision not to make the additional submissions requested by the Tribunal, the Complainant did file additional submissions.

[35] Mr. Leonard believes that the request to remove CAT as a respondent is premature. He submits that he did not ask that Penner International replace CAT as the respondent,

but that it be added as a new respondent, as he had requested originally, when he filed his complaint with the Commission.

[36] He adds that it is not enough, as CAT, Penner International and SLH claim, to simply analyze the corporate history of the businesses involved. According to him, at issue rather is whether CAT was his "employer," and, if that is the case, whether, under section 7 of the CHRA, it engaged in a discriminatory practice on one of the prohibited grounds of discrimination set out in the CHRA. In this respect, the Complainant bases himself on the definition of "employer" in subsection 40.1(1) of the CHRA and section 5 of the *Employment Equity Act*, S.C. 1995, c. 44. He is thus attempting to show that CAT was in fact an employer within the meaning of the CHRA. Importantly, Mr. Leonard alleges that SLH was a subsidiary of CAT and that CAT made policy decisions, which is necessarily relevant to the complaint.

[37] He adds that CAT decided to rehire him when it was in the process of acquiring SLH. He was assured by Daniel Goyette of CAT, through its subsidiaries, that his job would not be affected by the acquisition. In addition, he specifies that CAT had decided to wind down SLH's operations and to amalgamate its employees into another company.

E. Additional Reply from CAT, Penner International and SLH

[38] The Respondent, Prospective Respondent and SLH deny that Mr. Leonard was employed by CAT and argue that 8507597 Canada Inc. acted in an employer's capacity towards him. They submit that he therefore had an employment relationship with 8507597 Canada Inc. and not with CAT.

[39] They point out that it was not CAT that purchased SLH's assets, but 8507597 Canada Inc., which later changed its name to SLH.

[40] Moreover, CAT, Penner International and SLH feel that Mr. Leonard is not applying the right definition of "employer" within the meaning of the CHRA and also deny that CAT was aware of Mr. Leonard's accommodation needs or his personal situation, which required certain accommodations.

[41] Lastly, they allege that the offer of employment made to the Complainant, dated October 19, 2017, clearly shows the employment relationship between him and SLH. That offer, which was signed by the presidents of SLH and numbered company 8507597 Canada Inc., confirms that SLH was going to be Mr. Leonard's employer after the acquisition transaction between the two companies had been finalized.

V. Legal Framework

[42] The Tribunal has the jurisdiction to add a party to, or to remove a party from, a proceeding; the parties did not challenge this (*Peters v. United Parcel Service Canada Ltd. and Linden Gordon*, 2019 CHRT 15 (CanLII) at paras 31 to 36 [*Peters*]).

[43] This was already provided for in rule 8(3) of the Tribunal's former *Rules of Procedure* (03-05-04), which have since been replaced, with the adoption of the Tribunal's new rules of procedure, the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 ("the *Rules*") in July 2021.

[44] The parties are bound by the Tribunal's new *Rules*, which was confirmed during a case management conference call on October 26, 2021.

[45] Rule 29 of the *Rules* sets out the procedure to follow in order to add a party to a Tribunal proceeding. It states as follows:

> A party that wishes to have a person recognized as a party in respect of an inquiry must serve and file a notice of motion for an order to that effect after having served the notice of motion on the prospective party. The prospective party may make submissions on the motion.

[46] At paragraph 39 of *Peters*, the Tribunal wrote the following specifically with regard to adding a respondent to a proceeding:

> Because the addition of a party at the inquiry stage could deprive that party of the screening function provided by the Commission pursuant to ss. 41 and 44 of the *Act*, the Tribunal generally exercises caution when adding a respondent. It is incumbent on the Tribunal to carefully consider the various risks and prejudice that may result from its decision to do so. (see *Gervais v. Canada (Department of Agriculture)*, 1986 CanLII 81 (CHRT), 7 C.H.R.R.

> D/3624; *Coupal v. Canada (Border Services Agency)*, 2008 CHRT 24 ("*Coupal*") at para 20).

[47] The decision to add a party to a proceeding is not without consequences. The CHRA sets out a very specific mechanism for the handling of complaints and their referral to the Tribunal for inquiry. The Commission is a major component of that procedure in that, among other things, it plays a complaint screening or gatekeeper role. For a more detailed description of this mechanism, the Tribunal refers the reader to *Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 (CanLII) at paragraphs 12 to 18, where the complaint referral mechanism is summarized.

[48] As the Tribunal wrote at paragraph 41 of *MCFN v. AGC*, 2021 CHRT 31 (CanLII) [*MCFN*]), about the role played by the Commission:

> [41] . . . To deprive some respondents of the protections afforded by this process by eliminating the opportunity to answer the allegations, during an investigation by the Commission before a referral takes place, would deprive them of procedural fairness and natural justice afforded to those respondents who are permitted to participate fully in the process at the Commission.

[49] At paragraphs 46 to 48 of *Brown v. Canada (National Capital Commission)*, 2003 CHRT 43 (CanLII) [*Brown*], a decision cited in *MCFN*, the Tribunal also wrote the following:

> [46] The final argument raised by Public Works is prejudice. This rests primarily on the fact that the department has lost the benefits that generally accrue to a Respondent during the investigative process. This is an important consideration, which is offset by the fact that this will usually be the case, if a Respondent is added after a complaint has been referred to the Tribunal under the *Ac*t.
>
> [47] The reality is that Mr. Brown could file a new complaint tomorrow, with Public Works as a Respondent. The Commission could then refer the matter to the Tribunal under section 49(1) of the *Ac*t, with or without an investigation. **In my view it would be inappropriate to rely on this kind of formal maneuvering to bring Public Works before the Tribunal**.
>
> [48] **The idea that the Complainant would have to file a second complaint to deal with the issues that might arise with Public Works runs against the spirit of the *Ac*t. This would merely delay the satisfaction of any rights to which the Complainant may be entitled and use up the scarce resources of the system of justice**. If Public Works is a proper party in the matter, it should be brought in as expeditiously as possible, **in a manner that deals naturally with all of the issues that arise out of the complaint**

> **before me**. I see no reason why any deficiencies in the process cannot be made up by giving Counsel for the Department of Public Works the necessary time to prepare her case.
>
> [Emphasis added]

[50] That being said, the Tribunal has traditionally applied the same analysis when ruling on the addition of a party to a complaint, with *Syndicat des employés d'exécution de Québec-Téléphone, section locale 5044 du SCFP v. Telus Communications (Québec) Inc.,* 2003 CHRT 31 (CanLII) [*Telus*], being the landmark decision in this regard.

[51] That decision was cited in *Harrison v. Curve Lake First Nation*, 2018 CHRT 7 (CanLII) [*Harrison*], in which the Tribunal accurately summarized the three factors generally considered when dealing with a motion to add a party:

(1) Is the presence of this new party necessary to dispose of the complaint?

(2) Was it reasonably foreseeable, once the complaint was filed with the Commission, that the addition of a new respondent would be necessary to dispose of the complaint?

(3) Will the addition of a new party result in serious prejudice to the opposing party?

(See also C*oupal and Milinkovich v. Canada Border Services Agency*, 2008 CHRT 24 (CanLII))

[52] Although the Tribunal has historically applied the *Telus* analysis, Member Mercer raised certain reservations about this analysis in *Peters.*

[53] In that decision, she wrote the following at paragraph 47:

> [47] Lastly, although this does not form the basis of my decision on this motion, I note that the *Telus* factors differ considerably from those considered by Human Rights Tribunals in other jurisdictions in Canada. . . .

[54] She also notes at paragraphs 44 and 45:

> [44] Although the *Telus* factors have been indirectly endorsed by the Federal Court in *Canada v. Brown,* 2008 FC 734 ("*Brown*"), and have been applied with some consistency by the Tribunal since 2003, it cannot be said that Member Deschamps intended or purported to establish a closed list of factors to consider, or a bright line rule with respect to the addition of a party to the

> Tribunal's inquiry. The *Brown* decision and the further decisions of the CHRT do not support such a limited approach either.
>
> [45] Such a rigid approach would likely be inconsistent with the Tribunal's statutory obligation to conduct its proceedings in an informal and expeditious manner within the necessary bounds of natural justice and procedural fairness.

[55] I share the reservation expressed by Member Mercer in 2019, in that it is uncertain whether the factors historically considered by the Tribunal are so rigid and inflexible that the Tribunal may not consider other relevant factors when dealing with a motion to add a party. It is also interesting to note that the analyses performed by provincial human rights tribunals diverge from this Tribunal's analysis (see, for example, in Manitoba, *Webb v. LHS Holdings Inc.*, 2020 MBHR 5; in Alberta, *Pujji v. 1819010 Alberta Ltd o/a Liquor King Spruce Grove*, 2022 AHRC 14; in the Northwest Territories, *Portman v. Government of the Northwest Territories and Sun Life Assurance Company of Canada*, 2020 CanLII 19009 (NT HRAP); in Ontario, *SR v. Ontario (Education),* 2021 HRTO 535, and *Smyth v. Toronto Police Services Board*, 2009 HRTO 1513 [*Smyth*]; and in British Columbia, *MacGillivary v. Parkland Fuel Corporation*, 2021 BCHRT 86). Lastly, it is of note that in *Harrison*, the Tribunal also seems to combine the criteria of foreseeability and prejudice, which raises certain reservations about the approach traditionally applied by the Tribunal (*Harrison*, at paras. 34 and 35, citing *beachesboy@aol.com v. Heather Fleming and Ronald Fleming*, 2007 CHRT 52, at para. 21).

[56] Despite these comments, the parties ultimately did not submit any specific arguments on this subject. The Tribunal will thus confine itself to applying the historical analysis, which, at any rate, will allow it to logically and reasonably dispose of the issue without necessarily having to consider other, additional factors.

VI. Analysis

A. Adding Penner International as Respondent

[57] First, the Tribunal notes that CAT, Penner International and SLH do not object to Penner International's being added as a respondent. However, they formally object to SLH's being added.

[58] It must be noted that the Complainant is not requesting that SLH be added as a respondent and the motion only involves Penner International. The Tribunal will therefore focus its analysis on this single element.

[59] The Tribunal must also ensure that the correct respondent is before it, with the correct legal name. According to the observations provided by the parties, it would seem that Penner International and SLH were amalgamated. The Tribunal therefore understands that, following this amalgamation, the company conducted business under the name Penner International.

[60] That said, Mr. Leonard states that the Commission withdrew SLH as a respondent to the complaint of its own volition, with no advance notice or reasons. He notes that the Commission should not have done this when he had explicitly named SLH as a respondent in the forms he had completed.

[61] On this, it is essential to recall that the Tribunal does not have the jurisdiction to review the Commission's decisions (*Williams v. Bank of Nova Scotia*, 2021 CHRT 24 at para 32). In the same vein, at paragraph 34 of *Oleson v. Wagmatcook First Nation*, 2019 CHRT 35, my colleague, Member Harrington, wrote the following:

> [34] The Tribunal acquires its jurisdiction over human rights complaints when the Commission asks the Tribunal's Chairperson to institute an inquiry into a complaint. Once the Commission has made this request, the role of the Tribunal is to adjudicate the complaint, not to collaterally review the Commission's decision-making process:
>
> > … the Tribunal has no jurisdiction over the exercise of the Commission's discretion under CHRA s 44(3) (rejecting or referring a complaint)… The proper way to challenge a

> Commission decision in respect of such matters is through judicial review by the Federal Court.
>
> [See also *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162 (CanLII) at para 56]

[62] The Tribunal understands Mr. Leonard's argument, but it obviously cannot review the Commission's decision-making process or correct any breach of procedural fairness or principles of natural justice that may have occurred. That role is necessarily assigned to the Federal Court; judicial review before that court would have been the appropriate option for Mr. Leonard. However, to the Tribunal's knowledge, Mr. Leonard did not file an application for judicial review with that court.

[63] Nevertheless, as stated above, there is no question that the Tribunal has jurisdiction to add parties to its inquiries, regardless of what may have happened before the Commission.

[64] The Complainant's arguments in this regard are still useful and relevant in that they inform the Tribunal's analysis of adding Penner International as a respondent. One factor to consider, as noted in *Telus*, *Peters* and *Harrison*, is whether the Complainant could reasonably have foreseen that the prospective party would need to be added when he filed his complaint with the Commission.

[65] In analyzing this factor, what information is the Tribunal looking for? The Tribunal will naturally look at what happened when the complaint was filed with the Commission, and it must therefore be provided with that information. The Tribunal will then look at whether the Complainant could reasonably have thought to add the respondent in question at that stage of the process, since its presence was necessary to decide the case.

[66] If it is found that the Complainant could reasonably have foreseen adding the respondent but failed to do so, that finding would weigh in favour of dismissing the motion. If it is found that the Complainant could not reasonably have foreseen it, that finding would weigh in favour of adding the respondent. The circumstances of this case are, let us say, unusual.

[67] The Complainant argues that he did in fact add SLH as a respondent to his complaint when he filed it with the Commission. The Tribunal has received documentation from the Complainant regarding his complaint, including documents and forms relating to the filing of the complaint with the Commission.

[68] It should be noted that the other parties have neither challenged the validity of these documents and forms nor filed any evidence that would lead the Tribunal to question the validity or integrity of the documents and forms.

[69] The Tribunal notes from the first page of the Commission's complaint summary that the Complainant filed his complaint on August 9, 2018. On the cover page, CAT is shown as the respondent.

[70] On the second page of the summary, which contains the Complainant's information, the respondent shown is not CAT, but SLH Transport Inc., based in Kingston, Ontario.

[71] A few pages later, on page 4 of the Commission's complaint kit, the Complainant's response to the question "Who were you dealing with?" is "SLH Transport Inc.", again based in Kingston, Ontario.

[72] The Tribunal therefore notes that Mr. Leonard indicated two respondents in his forms—CAT and SLH Transport Inc.—but they appear in different places, on different pages.

[73] It is well established that the Complainant completed the forms himself. In addition, the Complainant is adamant that he filed a complaint against both respondents.

[74] Of course, the Tribunal cannot make any assumptions about what might have happened when the complaint was received by the Commission or at any point during its processing. The Commission, through its counsel, has not commented on this issue or provided any explanation as to what might have happened.

[75] Moreover, the Tribunal has no information on what is required when complainants such as Mr. Leonard wish to file a complaint against two separate respondents. Should they complete one form for both respondents or two separate forms? Does the Commission ask

them to file a second, separate complaint, and did it do so in Mr. Leonard's case? Are there specific, clear instructions for complainants wishing to file a complaint against two respondents? The Tribunal has no answers to these questions. It does not know what might have happened in Mr. Leonard's case.

[76] On a balance of probabilities, the evidence before the Tribunal shows that Mr. Leonard not only intended to include two separate respondents in his complaint but in fact did so. However, he did so in two different places in his forms. Unfortunately, it is safe to assume that this was not the correct way.

[77] That said, in the Tribunal's analysis of what happened in this case when the complaint was filed, the evidence shows that, on a balance of probabilities, Mr. Leonard named SLH as a respondent to his complaint and clearly anticipated that SLH would be included in his complaint because SLH was a necessary respondent to decide the case. On that basis alone, the Tribunal can conclude that the first factor of the *Telus* analysis has been met.

[78] The Tribunal also finds that the presence of Penner International (formerly SLH) is necessary to decide the case.

[79] In that regard, the Tribunal had the opportunity to review not only the arguments relating to this ruling but also the statements of particulars of Mr. Leonard and CAT, as well as the original complaint and the Commission's complaint forms.

[80] In the background to his complaint to the Commission, which forms an integral part of his complaint form, Mr. Leonard alleges that he worked 9½ years for his employer, SLH, with which he had an arrangement to meet his child care needs. He worked in the afternoon and cared for his child in the morning.

[81] In May 2018, he was temporarily laid off by his employer. In July, he alleges, he was recalled by his employer to work during the day in another workshop that was farther away than his original work location. Mr. Leonard states that, since his work schedule had changed, he informed his employer of his child care situation and the fact that he could not

return to work at the required hours. He states that he received a termination notice on July 26, 2018.

[82] The information in this background at the Commission stage is largely reiterated by the Complainant in his statement of particulars in the Tribunal record.

[83] The Tribunal also had the opportunity to review a number of corporate documents filed by the parties in connection with this ruling. These include corporate documents from the various companies involved in this case, fact sheets from federal business registry searches, and certificates of amalgamation, to name a few.

[84] From the submissions of CAT, Penner International and SLH, the Tribunal understands that the Complainant worked for SLH, which in the past was a subsidiary of Sears Canada. Sears Canada went bankrupt in 2017 and closed all of its stores in Canada, and that is when the numbered company 8507597 Canada Inc. purchased the assets of SLH.

[85] The Tribunal notes that this company operated under the corporate name 8507597 Canada Inc. from 2013 to 2018. As stated by CAT, SLH and Penner International, it appears that the company changed its name to SLH on June 4, 2018. These changes occurred exactly when the Complainant was temporarily laid off, that is, around May 2018. A few weeks later, in July 2018, Mr. Leonard was recalled by his employer.

[86] It must be emphasized that the Tribunal is not deciding the case on its merits. However, on the face of it, nothing more is required to satisfy the Tribunal that SLH has a role to play in the allegations raised by the Complainant.

[87] In the circumstances, SLH's presence as a party becomes important because the discrimination alleged by Mr. Leonard implies that it may be liable as an employer. SLH's presence is therefore necessary to decide the case, which is the second factor in *Telus*.

[88] From the submissions of CAT, SLH and Penner International, the Tribunal understands that SLH was ultimately amalgamated into Penner International on January 31, 2020. This seems clear from the documents reviewed by the Tribunal, including the certificate of amalgamation of Penner International filed by the Complainant and the fact

sheet provided by CAT, SLH and Penner International for numbered company 850759 Canada Inc. (which changed its name to “SLH” on June 4, 2018).

[89] It is here that the question arises as to the “correct” company name. Since SLH has become part of Penner International, it would make sense to name Penner International as a respondent to the complaint.

[90] That said, it must be understood that Penner International is being named as a result of the amalgamation, and the Complainant’s allegations of discrimination relate to the potential liability of his former employer, SLH. The Tribunal believes that it must be practical and that this is a formality that should not prevent it from fulfilling its mandate and dealing with Mr. Leonard’s complaint. The Tribunal’s clear objective is of course to have the right entity before it and not a company that is a shell company or a company that no longer exists.

[91] The final factor in *Telus* is the prejudice to the opposing party that would result from adding a new party to the inquiry. The Tribunal notes that, in their submissions, CAT, Penner International and SLH do not present any evidence to suggest that prejudice would be caused if Penner International were added as a respondent. Moreover, the Tribunal concludes that the possible prejudice to Penner International resulting from its addition to the inquiry—if any—may be greatly reduced at this stage of the proceedings.

[92] Indeed, the inquiry is still in its early stages; only statements of particulars, lists of documents relevant to the case, lists of witnesses and summaries of their testimony have been filed in the Tribunal’s record. The parties have attended only one case management conference call to deal with the motion leading to this ruling.

[93] The Tribunal realizes that Penner International will not have the benefit of the Commission’s review and investigation process (see, for example, CHRA, ss. 41 and 44; *Peters* at para 39) or the opportunity to seek judicial review of the Commission’s decision; however, the Tribunal must be practical and informal.

[94] This is exactly what Tribunal member Dr. Paul Groarke refers to in *Brown*, at paragraphs 47 and 48. It would be impractical and illogical to ask Mr. Leonard to file a

separate, formal complaint against SLH (now Penner International) when the Tribunal unquestionably has the authority to add it as a respondent.

[95] This excessive formality and the additional delays resulting from such a manoeuvre would be contrary to the spirit of the CHRA and its objectives of timeliness and flexibility (CHRA, s. 48.9(1)) and would waste the resources of the Tribunal and the Commission, as well as those of Mr. Leonard, Penner International and CAT, which at this stage is still a respondent to the inquiry.

[96] It is also logical and reasonable for the Tribunal to have before it all the parties necessary so that it can deal with the case effectively and efficiently. Requiring Mr. Leonard to file a separate complaint with the Commission against Penner International can be expected to affect the inquiry into the complaint. The Tribunal wishes to avoid unnecessary delays in the proceedings, not only in the interests of the administration of justice, but also in the best interests of all parties involved in the inquiry.

[97] To be clear: Penner International, as a new respondent, will have the same rights as all the other parties. It will be entitled to a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations in relation to the case (CHRA, s. 50(1)).

[98] Accordingly, it may file its own statement of particulars, compile its list of documents potentially relevant to the case and prepare its list of witnesses. Like all the other parties, it will also have the benefit of pre-hearing disclosure of documents potentially relevant to the case.

[99] In short, Penner International will have the same rights and obligations as all the other parties, and the proceedings will have to be adjusted to account for this new addition. Consequently, the Tribunal will allow the other parties to amend their statements of particulars (if they so desire) and will order new time limits for filing (if necessary), and Penner International will be included in these new steps so that it may file its own defence.

[100] Finally, although Penner International does not have the opportunity to seek judicial review of the Commission’s decision to refer the complaint to the Tribunal, it does retain its

right to appeal this ruling to add it as a respondent before the Federal Court. It also retains its right to appeal future rulings of this Tribunal and of course its final decision. To be clear, at this stage the Tribunal is not deciding the case on its merits, but it should be noted that Penner International will still be able to apply to the Federal Court for judicial review.

[101] For all the reasons above, the Tribunal finds that Penner International should be added as a respondent to the inquiry into Mr. Leonard's complaint.

B. Removing CAT as Respondent

[102] In their response to the Complainant's motion, CAT, SLH and Penner International request that the Tribunal remove CAT as a respondent to the complaint. The Complainant opposes the request. The Tribunal notes that it requested additional submissions on this matter in order to make a final ruling on the issue.

[103] Should the Tribunal remove CAT as a respondent to the complaint? No. At this stage of the proceedings, the Tribunal is not prepared to remove CAT as a respondent to the case because it is not plain and obvious how CAT is involved in the case and in the alleged discriminatory practices raised by the Complainant.

[104] In assessing whether a party may be removed from the inquiry into a complaint, the Tribunal must be cautious; it is certainly not a decision to be made lightly, as it will necessarily have significant repercussions not only on the inquiry but also on the parties involved.

[105] Requests to remove a respondent from the Tribunal's inquiry into a complaint are uncommon. A review of the Tribunal's case law amply supports this conclusion. Apparently, the Tribunal doesn't have a well-established trend in its case law in that regard. It therefore appears that the Tribunal has not developed a specific analysis for this sort of situation, and the parties have not drawn its attention to any relevant decisions by other tribunals or courts of law in this regard.

[106] That being said, it is reasonable to think that there are two possible approaches that could be taken when considering this sort of request (the removal of a respondent):

(1) The first would regard the request to remove a respondent as a summary dismissal of the complaint against the respondent making the request to be removed.

(2) The second, meanwhile, would be a more directed and specific analysis of the issue of removing a party.

[107] As will be discussed in the following paragraphs, no matter which of these two approaches the Tribunal takes, the final result will be the same.

(i) Summary Dismissal of Complaint

[108] The first approach would involve a summary dismissal of the complaint against the respondent making the request to be removed.

[109] Viewed from this perspective, we can expect that the request by CAT, Penner International and SLH to remove CAT as a respondent entails, in practice, asking the Tribunal to evaluate, at a preliminary stage of the proceeding, CAT's role, involvement, and liability with regard to the discriminatory practices alleged by the Complainant. At this stage, this preliminary request clearly arises without a full inquiry having been made into the complaint.

[110] To be perfectly clear, such a request amounts, in the end, to a sort of summary dismissal of the complaint against CAT; the Tribunal must make a summary, preliminary determination in advance that CAT has nothing whatsoever to do with the dispute. For example, the Tribunal could think of a situation where the respondent named in the dispute is clearly and obviously not the right party.

[111] However, this assumes that the Tribunal should then make this decision (to remove a respondent) without having heard extensive evidence on the subject and without allowing the other parties to present evidence in this regard at a hearing. In other words, the Tribunal would have no additional evidence to assist it in deciding the matter, thus resulting in the complaint being summarily dismissed.

[112] In *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 (CanLII) [*Canada (Attorney General)*], the Honourable Justice MacTavish noted that the

Tribunal has the power to decide a dispute without conducting an inquiry. That said, she also made clear that the Tribunal must be very cautious in dealing with this sort of request (to summarily dismiss a complaint) and should grant such requests only in the clearest of cases (*Canada (Attorney General)* at paras 139 and 140).

[113] In the case at hand, Mr. Leonard vehemently objects to CAT's removal as a respondent. He argues that only after holding a hearing will the Tribunal be able to determine whether CAT engaged in a discriminatory practice (or not) within the meaning of the CHRA. The Tribunal agrees with the Complainant.

[114] The Tribunal notes that it has received only a select few documents in support of the motion leading to this ruling, which amounts to very limited evidence of CAT's involvement in the case. The Tribunal has also not received any affidavits from the parties, heard any witnesses in the case, or been given any extensive evidence relating to the complaint.

[115] Accordingly, the fact of the matter is that there is very little information available to the Tribunal that would allow it to draw any definitive conclusions regarding CAT's involvement. Its involvement in the events alleged by Mr. Léonard is decidedly unclear.

[116] For example, the Tribunal was able to read a letter SLH sent to the Complaint, which was filed by the parties. It need only be said that in that letter dated October 19, 2017, it is specifically mentioned that CAT, acting through numbered company 8507597 Canada Inc., acquired SLH's assets and operations. It is also written in that letter that Mr. Leonard will still have his job after the transaction is completed. The Tribunal notes that the letter is signed not only by SLH's president, Paul Cooper, but also by Daniel Goyette, the president of 8507597 Canada Inc. In addition, on October 22, 2017, Mr. Leonard signed an agreement and an acknowledgment of the terms and conditions set out in the letter dated January 19, 2017, in which it is specifically stated that he accepts the terms and conditions in the letter from Mr. Cooper and Mr. Goyette.

[117] The Tribunal also observed that Daniel Goyette appears in several corporate registry records submitted by the parties. For example, Mr. Goyette is the sole director of numbered company 8507597 Canada Inc. (which was renamed SLH Transport Inc. in 2018). This also corroborates what appears in the letter to the Complainant dated October 19, 2017.

[118] Furthermore, it seems that Mr. Goyette is also a director of Penner International, along with Annie Goyette and Karine Goyette. The Tribunal also notes that, according to this record, numbered company 8507597 Canada Inc., renamed SLH Transport Inc., was amalgamated into Penner International.

[119] The Complainant also alleges in paragraph 46 of his statement of particulars that SLH had effective control of CAT. It appears that Mr. Goyette is also CAT's director.

[120] CAT, SLH and Penner International allege that Mr. Leonard was not an employee of CAT and deny that CAT was made aware of his accommodation needs. Despite these claims, and in light of the preceding paragraphs, the Tribunal is not sure of CAT's involvement in the discriminatory practices alleged by Mr. Leonard.

[121] Therefore, the Tribunal is in no position to determine, without hearing any evidence in this regard, whether CAT is in any way, directly or indirectly, connected to the allegations of discrimination raised by the Complainant, and to what extent.

[122] Accordingly, and for all these reasons, it is neither plain nor obvious for the Tribunal to make a preliminary finding regarding CAT's involvement in this case (*Canada (Attorney General)* at para 140). This is why the Tribunal must carry out its inquiry and hear all the evidence presented by the parties before drawing any conclusions in this regard.

(ii) Specific Analysis Regarding Removal of Respondent

[123] The second approach would be to carry out a specific analysis regarding the removal of a party. For example, the Tribunal could draw upon a similar analysis done by the Human Rights Tribunal of Ontario ("HRTO"), particularly in *Lemor v. Ontario (Transportation)*, 2018 HRTO 124 (CanLII) [*Lemor*].

[124] It is worth noting that the HRTO's model is that of a direct access tribunal, meaning that there is no body whose role is to screen complaints as the Commission does under the federal regime. Complaints are filed directly with the HRTO, and the HRTO must necessarily screen them itself, one way or another.

[125] Therefore, we can assume that the HRTO has developed a considerable body of case law on certain preliminary issues or requests and, in the case at hand, on removing a respondent. A brief search of its decisions is all that is needed to conclude that that tribunal deals with such requests on a regular basis.

[126] Although this Tribunal is not bound by HRTO decisions, it is still worth our while to set out the analysis that the HRTO performs for requests to remove a respondent. At paragraph 10 of *Lemor*, the HRTO, relying on *Smyth*, cited above, wrote the following:

> [10] When determining a request to add or remove a respondent, the Tribunal considers the following three questions:
>
> 1. Are there allegations made that could support a finding that the proposed respondent violated the Code?
>
> 2. If the proposed respondent is an individual and an organization is also named, is there a compelling reason to include him or her as a respondent?
>
> 3. Would it be fair, in all the circumstances, to add the proposed respondent?

[127] Having regard to the first question, and if this Tribunal draws inspiration from this analysis, it must be acknowledged that in the case at hand, there are allegations that raise questions regarding the potential liability of CAT. The Tribunal refers the reader to the grounds stated at paragraphs 113 to 120 of this ruling.

[128] What is more, the Tribunal notes that the Complainant argues at paragraph 46 of his statement of particulars that although he worked for SLH throughout his employment, he believes that after CAT acquired the company, CAT became its “binding mind”.

[129] Mr. Leonard’s claims must still be tested against the evidence. But the fact remains that there is evidence that, if proved to be true, would allow the Tribunal to find that CAT violated the CHRA. Currently, the Tribunal is not at the stage of deciding the question on the merits, which will be done at the hearing, in light of the evidence that the parties will submit.

[130] As for the second question, as the HRTO remarked in *Lemor*, this does not apply in the circumstances (*Lemor*, at para 11).

[131] Finally, the last question is aimed at determining whether it was fair or not to remove or add the party concerned. In the case at hand, the Tribunal must consider whether it would be fair or not to remove CAT as a respondent, in accordance with the specific circumstances of the case. At this stage, the Tribunal finds that it would be unfair to remove CAT as a respondent in the inquiry.

[132] The Commission referred the complaint involving Mr. Leonard and CAT to the Tribunal for inquiry. It did so after conducting its own investigation, as the CHRA allows it to do. It considered it necessary to refer the complaint to the Tribunal because there were at the time grounds demanding that the Tribunal conduct an inquiry. Considering the nature of this mechanism, the Tribunal must necessarily respect the Commission's decision to refer the complaint involving CAT.

[133] In addition, it must be said that CAT is already a respondent to the inquiry into the complaint and that, if not for Mr. Leonard's decision to file a motion to add Penner International as a respondent, CAT would in any event have been party to the inquiry. It is also not clear that CAT would have chosen to file a request to have its respondent status removed.

[134] That being said, removing a respondent is a matter that the Tribunal must handle with great care. The Tribunal finds that it would be unfair to remove CAT as a respondent prematurely, at this stage of the proceedings. To do so would permanently deprive Mr. Leonard of the opportunity to present evidence at the hearing to establish—if there is discrimination—CAT's liability in engaging in the discriminatory practice, and the appropriate remedies.

[135] Finally, the Tribunal finds that, despite this decision, CAT had, has and will continue to have a full and ample opportunity to defend itself and present its arguments at the appropriate time. There is nothing stopping it from submitting evidence at the hearing to rule out its liability for the discriminatory practices alleged by the Complainant. And after hearing all the parties' evidence, which also includes evidence from the new respondent, Penner International, the Tribunal will be able to decide this question once and for all.

VII. Orders

[136] For all these reasons, the Tribunal grants Mr. Leonard's request to add Penner International as a respondent in the inquiry into the complaint.

[137] The Tribunal denies the request by CAT, Penner International and SLH to remove CAT as a respondent in the inquiry into the complaint.

VIII. Next Steps in Inquiry

[138] After making this order, the Tribunal will contact the parties to hold a case management conference call with a view to establishing the next steps to be taken in the inquiry into the complaint.

[139] In addition, as Penner International has filed its representations jointly with CAT and SLH through the same law firm, Goulart Workplace Lawyers, the Tribunal will issue this ruling to that firm, who will then be able to pass it on to Penner International.

[140] Finally, the Tribunal asks Penner International, if it decides to take part in the inquiry into the complaint, to officially appear in the Tribunal file. To this end, it must contact the Tribunal Registry, which will assist it in this process and provide guidance on the information it will have to provide.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
June 13, 2022

English version of the Member's decision

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2655/4121

Style of Cause: Keith Leonard v. Canadian American Transportation Inc. and Penner International Inc.

Ruling of the Tribunal Dated: June 13, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

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