

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2024 CHRT 88  
**Date:** June 25, 2024  
**File No.:** HR-DP-2871-22

**Between:**

**Varun Kapoor**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**LTL Transport Ltd. and Robert McDougall**

**Respondents**

**Ruling**

**Member:** Colleen Harrington

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## I. Background

[1] Varun Kapoor (Complainant) filed a complaint with the Canadian Human Rights Commission (Commission) on April 15, 2019 alleging that his former employer, LTL Transport Ltd. (Respondent), discriminated against him on the basis of his race, colour and national or ethnic origin, contrary to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [CHRA].

[2] Mr. Kapoor is a Canadian citizen who immigrated from India in 2006. He was an independent contractor (i.e. an owner-operator) who drove for the trucking company LTL Transport Ltd. from October of 2017 until December of 2018. Robert (Bob) McDougall is the owner of LTL Transport Ltd. and Mr. Kapoor alleges that, after working for him for a few months, Mr. McDougall started to delay his payments. Mr. Kapoor says that, when he inquired about the contract fees he was owed, Mr. McDougall became angry with him and began using abusive, racist and discriminatory language towards him. Mr. Kapoor says this happened both verbally and through email and text messages. Mr. Kapoor says that he became overwhelmed with stress due to Mr. McDougall's verbal abuse and, because he had not been paid since mid-November of 2018, he ended his working relationship with LTL Transport Ltd. in December of 2018. Mr. Kapoor says that Mr. McDougall continued to hold back contract fees owed to him and continued to use abusive, racist and discriminatory language towards him.

[3] The Commission investigated Mr. Kapoor's complaint against LTL Transport Ltd. and referred it to the Tribunal for a hearing. Although Mr. McDougall filed a Statement of Particulars (SOP) and two further replies setting out LTL Transport Ltd.'s defence to Mr. Kapoor's complaint, he eventually stopped participating in the Tribunal's process and stopped responding to correspondence from the Tribunal.

[4] At a Case Management Conference Call (CMCC) on May 8, 2024, the Tribunal advised the parties that, in a phone call with the Tribunal's Registry Officer on April 25, 2024, Mr. McDougall had indicated he was experiencing some health issues. In an effort to assist Mr. McDougall to decide how he wished to proceed with the complaint, the Tribunal had sent him an email on April 26, 2024 setting out five options for proceeding, including asking

for a stay of proceedings with the support of a medical professional, retaining legal counsel to assist him, trying mediation again, participating in a CMCC with the parties, or asking the Tribunal to move the matter forward to a hearing and dealing with the case management issues predominantly by email. Mr. McDougall did not respond to this email as requested and he did not attend the May 8, 2024 CMCC despite being provided with the call-in information. The Tribunal has received no further correspondence from Mr. McDougall or from anyone else on behalf of LTL Transport Ltd.

[5] The Tribunal has continued to move the complaint forward expeditiously and fairly, while ensuring all parties are accorded procedural fairness, as required by sections 48.9(1) and 50(1) of the CHRA. The Tribunal continues to send correspondence to Mr. McDougall by email and registered mail, in an effort to encourage him to participate in this proceeding.

[6] During the May 8, 2024 CMCC, Mr. Kapoor indicated that he wished to have Mr. McDougall added as a respondent, along with LTL Transport Ltd. The Tribunal established timelines for this motion and notified Mr. McDougall. Mr. Kapoor provided his motion in writing and the Commission provided submissions in support of Mr. Kapoor's motion. Mr. McDougall did not respond to the motion.

## **II. Decision**

[7] During a CMCC on June 10, 2024, I advised Mr. Kapoor and the Commission's counsel that I had reviewed their submissions and that I agreed to add Mr. McDougall as an individual respondent in this matter. I indicated that my written reasons for this decision would follow. Mr. McDougall did not attend the CMCC despite having been provided with the time, date and Zoom login information.

[8] This ruling sets out my reasons for granting Mr. Kapoor's request to add Mr. McDougall as a respondent.

### III. Issue

[9] There is only one issue to decide in this ruling: should the Tribunal add Robert McDougall as a respondent to this complaint?

### IV. Legal Framework

[10] There is no question that the Tribunal has the authority to add parties to a complaint that it has been asked to decide. Rule 29 of the *Canadian Human Rights Tribunal's Rules of Procedure, 2021* (SOR/2021-137) [Rules of Procedure] states:

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.

[11] The Tribunal generally considers the following factors when asked to add a party:

- 1) Is the presence of the 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?

*(Syndicat des employés d'exécution de Québec-téléphone section locale 5044 du SCFP v Telus communications (Québec) Inc., 2003 CHRT 31 at paras 30, 36; Coupal and Milinkovich v Canada Border Services Agency, 2008 CHRT 24 at para 9; Harrison v Curve Lake First Nation, 2018 CHRT 7 at paras 25, 26, E.F. v Correctional Service of Canada, 2023 CHRT 31 ["E.F."] at para 16).*

[12] The Tribunal accepts that these three factors are not necessarily intended to be exhaustive or restrictive (*E.F.* at para 17; *Peters v United Parcel Service Canada Ltd. and Linden Gordon*, 2019 CHRT 15 [*"Peters"*] at para 44). Depending on the facts of the specific case, the Tribunal may consider other factors as necessary in making its determination about the addition of a party. However, the Tribunal must always keep in mind that its inquiries are to be conducted in an informal and efficient manner, while taking care not to be unfair or to unduly prejudice any party (*Peters* at para 34; section 48.9(1) of the CHRA).

[13] One of the main concerns when the Tribunal is asked to add a party is the potential loss of the procedural protections afforded by the Commission's screening function (*Peters* at para 63). The Tribunal must therefore "carefully consider the various risks and prejudice that may result and weigh the factors involved" (*E.F.* at para 15, referring to *Peters* at paras 39-40). The Tribunal has concluded that allowing a party to be added without the benefit of the Commission's screening function should only occur in exceptional circumstances (*MCFN v AGC*, 2021 CHRT 31 at para 40).

## **V. Positions of the Parties**

[14] Mr. Kapoor asks the Tribunal to add Robert (Bob) McDougall as a respondent because he says Mr. McDougall is the sole owner and operator of LTL Transport Ltd. Mr. Kapoor points out that, in his human rights complaint, he stated that Mr. McDougall was "directly involved and personally verbally abused me via email and text messages." Mr. Kapoor says that Mr. McDougall "used my race, national or ethnic origin, and color against me."

[15] Mr. Kapoor argues that it is necessary to add Mr. McDougall as a respondent to his complaint because the company LTL Transport Ltd. may no longer exist and so Mr. McDougall could deny any association with the company.

[16] In its submissions, the Commission says it consents to the addition of Mr. McDougall as a respondent to the complaint and supports Mr. Kapoor's motion.

[17] The Commission submits that Mr. McDougall's participation as a respondent is necessary to effectively dispose of the complaint. It notes that, while the complaint was filed against LTL Transport Ltd., the entire narrative of the complaint and the allegations made in the complaint are about Mr. McDougall, who is the owner of LTL Transport Ltd.

[18] The Commission states that, during its investigation process, Mr. McDougall acted as the representative for LTL Transport. It says that, while he did not file a substantive response to the complaint before the Commission, Mr. McDougall did send correspondence to the Commission on December 10, 2019, in which he stated:

As per the letter you sent to me dated Nov. 29, 2019 I did respond to it, since this date and after the human right's reviewing my response the Human Rights found Varun Kapoor to not be forthcoming with [t]he truth, Varun Kapoor was found to have no claim against myself or LTL Transport Ltd. [as written]

[19] Mr. McDougall concluded his December 10, 2019 correspondence: "please review the file and note this is over", and he signed and dated the letter.

[20] The Commission also advises that, on the same day, Mr. McDougall left a voicemail message for the same person he addressed his December 10, 2019 letter to, in which he stated:

[...] this is Bob McDougall file number 20190681. This matter has been settled. I got a letter back roughly six weeks ago saying that Varun's claims were unfounded and incorrect. Um, if I hear anything more from you I will charge you with harassment. As I say, this file has been closed. [as written in the call log provided by the Commission]

[21] After the complaint was referred to the Tribunal on August 26, 2022, Mr. McDougall sent an email to the Commission's legal counsel assigned to the file on October 25, 2022, which states:

[...] there is NO LTL TRANSPORT LTD. Any more, it went out of business a few years ago, LTL TRANSPORT LTD. paid Varun Kapoor everything that was owed to him, Varun Kapoor is part of the reason LTL TRANSPORT LTD had to shut down due to all of his highway violations he failed to tell us about, in the signed agreement or contract between both parties it was clearly noted any violations are to be reported to LTL TRANSPORT LTD no later than 24 hours after the violation was given

SINCE THERE IS NO LONGER A LTLT TRANSPORT LTD I HAVE NO IDEA WHAT ANYONE CAN DO FOR ANYONE, CLOSED, SHUT DOWN ZERO ASSETS [as written]

[22] The Commission states that it is unclear what the status of LTL Transport Ltd. is, or if it is currently operating. It says that, as the owner of the Respondent company and a

separate person from LTL Transport Ltd., if he did in fact close the company, then the only effective avenue left for Mr. Kapoor to pursue his claim is against Mr. McDougall.

[23] The Commission also argues that it was not reasonably foreseeable that adding Mr. McDougall as a respondent was necessary for the disposition of the complaint at the time of its filing. It says the Commission only became aware that the Respondent company was no longer operating after the complaint was referred to the Tribunal.

[24] The Commission submits that there would be no prejudice to Mr. McDougall if the Tribunal adds him as a party at this stage of the process. As the owner of LTL Transport Ltd., Mr. McDougall is aware of the complaint, including the allegations focussed against him personally, and he made representations to the Commission during the investigation denying the allegations. The Commission argues that this is not similar to the situation in *Guay v Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34 in that Mr. McDougall has not been deprived “of the opportunity to present certain grounds of defence before the Commission pursuant to sections 41 and 44 of the” CHRA (at para 26).

[25] Finally, the Commission argues that refusing to grant the motion could potentially “foreclose a meaningful prospect of potential remediation for the Complainant” should his complaint be substantiated, and LTL Transport Ltd. is actually closed (see Peters at para 87). The Commission submits that adding Mr. McDougall as a respondent could avoid the futility of a potentially unenforceable Tribunal decision if LTL Transport Ltd. no longer exists.

## **VI. Analysis**

[26] In determining whether to add Mr. McDougall as a party to this proceeding, I am guided by the factors referred to above, that have been relied on by the Tribunal in previous applications to add parties.



**A. Is Mr. McDougall's presence as a party necessary to dispose of the complaint?**

[27] Yes, I accept that it is necessary to add Mr. McDougall as a respondent to Mr. Kapoor's complaint in order to properly dispose of the complaint. I agree with Mr. Kapoor and the Commission that if LTL Transport Ltd. is no longer operational, then the only effective avenue left for Mr. Kapoor to pursue his claim is against Mr. McDougall.

[28] Mr. Kapoor's human rights complaint, received by the Commission on April 15, 2019, lists LTL Transport Ltd. as the Respondent. In the section in which he details his allegations, Mr. Kapoor states that he worked with Mr. McDougall, "who is the owner of this trucking company", from October 17, 2017 until December 27, 2018. He says that he originally had a one-year contract with Mr. McDougall.

[29] The human rights complaint sets out Mr. Kapoor's experiences working with Mr. McDougall. He states that, during their first few months of working together, Mr. McDougall was "respectable and easy to work with" but then Mr. McDougall allegedly started treating him unfavourably when Mr. Kapoor asked him for payment, which he says became "increasingly delayed". The complaint states: "By the end of 2018, there was so much verbally abusive language being used by [Mr. McDougall] towards myself, that I became overwhelmed with stress." He says he has not received any payment from Mr. McDougall since November 15, 2018. Mr. Kapoor says he gave Mr. McDougall his 15-day notice of resignation from the job on December 21, 2018. Following his resignation, Mr. Kapoor says that Mr. McDougall continued to refuse to pay him and that he began to avoid Mr. Kapoor's phone calls and used "abusive, racist, and discriminatory language when he did speak to me."

[30] I note that, as the hearing is yet to take place, the allegations have not been proven.

[31] Mr. McDougall has at all times acted as the representative for LTL Transport Ltd. with respect to Mr. Kapoor's complaint. It is clear that Mr. McDougall did participate to some degree in the Commission's process, responding on behalf of LTL Transport Ltd. He also participated in the Tribunal's process until recently. The Commission advised that Mr.

McDougall participated in the Tribunal's mediation process on behalf of the Respondent. He also filed an SOP on behalf of LTL Transport Ltd.

[32] At the outset of his SOP, received on April 5, 2023, Mr. McDougall states: "The most important thing in this entire report is that LTL Transport and its employee at the time are not racist in any way, LTL Transport and its employee at the time never ever once has cared about race, color or looks of anyone ...". The SOP later states:

Equally important is that it is Varun Kapoor's behaviour, verbal abuse and threats Varun Kapoor threatened LTL Transport's employee Bob with at the time that made Bob act out of character as Bob has treated and helped all owner operators and employees like family, support, patience and financially as Bob treated Varun up until Varun became abusive mid September after Bob approached Varun about all of the highway offences shown on the carrier profile of which Varun still disputes. [as written, except original is all upper case]

[33] Later in the SOP, Mr. McDougall states: "LTL Transport and the owner of LTL Transport have never been racist ..." and "Varun Kapoor caused the owner of LTL Transport to have serious depression and major long time health issues ...". The SOP is signed "LTL TRANSPORT LTD. BOB".

[34] In addition to the SOP, Mr. McDougall submitted two further replies to Mr. Kapoor's allegations. In the reply dated April 17, 2023, Mr. McDougall states that "Varun's letters and false accusations against LTL Transport and Bob have now raised the Question as to Varun Kapoor being sued by LTL Transport and Bob and charged with Defamation of Character, LTL Transport has consulted with a Lawyer Friday ...". [as written]

[35] The Commission is correct that all of the allegations made in the complaint are about Mr. McDougall, who is the owner of LTL Transport Ltd. In reply, Mr. McDougall has provided detailed responses to Mr. Kapoor's allegations against both himself and LTL Transport Ltd.

[36] It is unclear what the current status of LTL Transport Ltd. is or if it is currently operating. As the Commission says, as the owner of the Respondent company and a separate person from LTL Transport Ltd., if Mr. McDougall did in fact close the company, then the only effective avenue left for Mr. Kapoor to pursue his claim is against Mr. McDougall. I am persuaded that it is necessary for Mr. McDougall to be added as a party to

the complaint in order to avoid the potential futility of an inquiry in which discrimination is found to have occurred, yet there is no respondent from whom Mr. Kapoor may receive meaningful remedies pursuant to section 53 of the CHRA.

**B. 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?**

[37] No, I accept the Commission's submission that it only became aware that the Respondent company was potentially no longer operating after the complaint was referred to the Tribunal. This is evidenced by the emails from Mr. McDougall to the Commission dated October 24 and 25, 2022 stating that LTL Transport Ltd. no longer exists, as it went out of business a few years ago, and there are no assets. This is after the date that the Commission wrote to the Tribunal's Chairperson on August 18, 2022, requesting that she institute an inquiry into the complaint.

[38] Even after Mr. McDougall advised the Commission that LTL Transport Ltd. had shut down, he provided an SOP on behalf of the company. The Respondent's SOP and replies do not indicate that LTL Transport Ltd. is no longer operational, so it is understandable that the discrepancy in messaging from Mr. McDougall is concerning for Mr. Kapoor. It is this uncertainty that makes it necessary to add Mr. McDougall as a respondent separate from LTL Transport Ltd.

**C. Will the addition of a new party result in serious prejudice to the opposing party?**

[39] No, I cannot conclude that adding Mr. McDougall as a respondent at this stage will result in serious prejudice to LTL Transport Ltd. or to Mr. McDougall himself. As he chose not to respond to the Complainant's motion, I have no submissions in relation to prejudice against either LTL Transport or Mr. McDougall.

[40] Mr. McDougall is clearly aware of the allegations against the company and against him personally and he has responded to those allegations through his SOP and replies. The Commission advised that Mr. McDougall had made representations during its investigation

denying the allegations, so I accept that he has not been deprived of the opportunity to present certain grounds of defence before the Commission pursuant to sections 41 and 44 of the CHRA. By being added as a respondent at this stage, Mr. McDougall is not being denied the procedural protections afforded by the Commission's screening function.

[41] Mr. Kapoor is not asking to add new grounds of discrimination or new discriminatory practices that have not already been put to Mr. McDougall through the Commission's process and the Complainant's SOP. Mr. McDougall has responded quite extensively to Mr. Kapoor's allegations in his own SOP and replies. He also has the opportunity to appear at the hearing of this complaint and participate on behalf of himself and LTL Transport Ltd.

#### **D. Conclusion**

[42] In order to avoid the futility of a potentially unenforceable Tribunal decision if there is a finding of discrimination against LTL Transport Ltd., which may no longer exist, I accept that it is necessary to add Mr. McDougall as a respondent in order to decide this complaint as intended by the CHRA. At all times, Mr. McDougall has acted as the representative for LTL Transport Ltd. with respect to Mr. Kapoor's complaint, which specifically identifies Mr. McDougall as the person who engaged in the alleged discriminatory practice under the CHRA. Mr. McDougall is aware of the allegations against him and has responded to them in both the Commission's screening process and the Tribunal's case management proceeding. No prejudice to Mr. McDougall or LTL Transport Ltd. has been identified with respect to the addition of Mr. McDougall as a party.

**VII. Order**

[43] Consistent with the statutory authority provided in section 48.9(2) of the CHRA and Rule 29 of the Tribunal's Rules of Procedure, I order that Robert (Bob) McDougall be added as a Respondent to this complaint.

*Signed by*

Colleen Harrington  
Tribunal Member

Ottawa, Ontario  
June 25, 2024

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** HR-DP-2871-22

**Style of Cause:** Varun Kapoor v. LTL Transport Ltd.

**Ruling of the Tribunal Dated:** June 25, 2024

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Varun Kapoor, for Self-represented

Jonathan Bujeau, for the Canadian Human Rights Commission

No submissions received on behalf of LTL Transport Ltd. or Robert McDougall