

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 38
Date: May 9, 2025
File No.: HR-DP-3059-24

Between:

Mirsad Herceglic

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Gladstone Transfer Ltd.

Respondent

Ruling

Member: Ashley Bressette-Martinez

I. OVERVIEW

[1] This ruling is about who the proper respondent is in this case.

[2] The Complainant in this case is Mr. Mirsad Herceglic. He filed a complaint with the Canadian Human Rights Commission (the “Commission”) in September 2020. He alleges that his former employer, Gladstone Transfer Ltd. (GTL), discriminated against him because of his national and ethnic origin contrary to sections 7 and 10 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA).

[3] In October 2022, GTL was sold to Mr. Grant Bradshaw.

[4] The Commission finished its investigation into Mr. Herceglic’s complaint in December 2022 and referred his complaint to the Tribunal in September 2024.

II. MOTION

[5] Before either of the parties filed their Statements of Particulars with the Tribunal, Mr. Bradshaw told the Tribunal that GTL is not the proper respondent and filed this motion. Mr. Bradshaw said that he has never met the Complainant. He says that the complaint was filed before he took ownership of GTL and that he has no information about this case. Mr. Bradshaw says Scott Kinley, the previous owner of GTL, is responsible for what happened at the company while he was the owner. He relies on an excerpt from the Share Purchase Agreement for GTL signed by himself and Mr. Kinley.

[6] The Complainant opposes the motion and says that because Mr. Bradshaw knew about the complaint at the time he purchased GTL, GTL is the proper respondent.

[7] Mr. Kinley provided short submissions. He says that, based on the Share Purchase Agreement between himself and Mr. Bradshaw, nothing obliges Mr. Kinley to “take carriage of” these claims. Mr. Kinley says the “motion is without merit” and that his responsibility for human rights claims is limited to indemnifying Mr. Bradshaw for claims not covered by insurance.

[8] The Commission also provided submissions. Its position is that a change in individual ownership does not mean GTL, as a corporation, is not responsible for what allegedly happened. It says I should dismiss this motion.

[9] Mr. Bradshaw did not provide any submissions in reply.

III. DECISION

[10] I am dismissing the motion. GTL is the proper respondent.

IV. ISSUE

[11] Does the sale of GTL after the events giving rise to the complaint prevent it from being held responsible for those events under the CHRA?

V. ANALYSIS

[12] No. The sale of the company from Mr. Kinley to Mr. Bradshaw does not bar GTL from being held liable as a corporate entity for events occurring prior to the sale.

[13] In its submissions, the Commission points out that the CHRA contains no provisions that incorporate successor liability into the human rights scheme. It relies on *Bouvier v. Metro Express*, 1992 CanLII 1429 (CHRT) at para 38–39, *aff'd Canada (Human Rights Comm.) and Bouvier v. Canada (Human Rights Tribunal)*, 1993 CanLII 16518 (FC) [*Bouvier*] in which this Tribunal found that, where company assets are transferred from a vendor to a purchaser, the purchasing company cannot be held liable for discrimination allegedly committed by the vendor. In *Bouvier* at para 36, the Tribunal said, “it would be unfair for a person who has never been personally bound by a contract to be forced to comply with obligations to which he or she has not agreed, just as it would be unfair for someone who has personally committed no tortious act to be held liable for the tort and forced to compensate the victim thereof”.

[14] *Bouvier* was clear that this did not mean that a successor employer will never be liable for discrimination committed by the employees of the previous employer. An exception to the rule is where a successor employer could be held liable for discrimination if a company was sold simply to avoid responsibility for discrimination and to avoid the effect of the law (*Bouvier* at para 39).

[15] In *Bouvier*, the purchasing company, Loomis, argued successfully that it was not liable because it did not purchase Metro Express' liabilities and assets in their entirety. Loomis purchased the operating name from Metro Express (and other assets). After that sale, the vendor, Metro Express, continued to exist as a numbered company. The complainant and employee who discriminated against the complainant in that case worked for Metro Express, but they were no longer employed by Metro Express when some of its assets were sold to Loomis. The Tribunal found Loomis was not liable for what happened to the complainant prior to the sale of assets.

[16] The case I am dealing with is different from *Bouvier*. In this case, no one disputes that Mr. Bradshaw took ownership of GTL in October 2022. The parties agree that he did not own the company when the alleged discrimination took place, including when Mr. Hercegljic was fired from his job with GTL in August 2020. In this case, the transfer of ownership did not occur through the sale of assets, but rather by way of the sale of shares. Mr. Bradshaw provided the following excerpt from the Share Purchase Agreement that transferred ownership of GTL from Mr. Kinley to Mr. Bradshaw:

Schedule 3.20 lists the "claims by former employees for Human Rights Violations" as the only known outstanding claim against GTL at the time of the sale and s. 3.20 confirms the parties' agreement that the "Vendor will be responsible for any and all costs associated with the claim not covered by Insurance and will indemnify the Purchaser in relation thereto. This paragraph 3.20 shall survive Closing for an unlimited duration.

[17] In his response to the motion, Mr. Kinley provided the following statement:

Mr. Bradshaw has referenced a share purchase agreement to which Mr. Kinley is a party which states that Mr. Kinley will be responsible for the costs associated with the claims not covered by insurance and will indemnify the

purchaser in relation thereto. That provision does not, as Mr. Bradshaw suggests, obligate Mr. Kinley to take carriage over the claims.

[18] The excerpt from the Share Purchase Agreement appears to confirm an agreement between the parties to the sale that GTL's liabilities for outstanding claims for human rights violations would remain liabilities of GTL. Mr. Kinley does not dispute this in his response. In this case, Mr. Kinley disclosed the "claims by former employees for Human Rights Violations" to Mr. Bradshaw.

[19] Mr. Bradshaw did not rely on any legal authorities, present any legal arguments or provide any supporting evidence to show that the purchase of GTL excluded responsibility for outstanding human rights claims. I disagree with Mr. Bradshaw that the Share Purchase Agreement makes Mr. Kinley the proper respondent in this case. A plain reading of the excerpt from the Share Purchase Agreement suggests that Mr. Kinley as the vendor of GTL is responsible for costs associated with "the claim" not covered by insurance. If anything, one might infer from the existence of this clause that Mr. Bradshaw did indeed assume carriage of the claims on behalf of GTL, otherwise why would there be a right of indemnification in his favour? That is, however, a matter between Mr. Kinley and Mr. Bradshaw and not one for me to determine or decide.

[20] Section 40 of the CHRA authorizes anyone with reasonable grounds to believe that a person has engaged in a discriminatory practice to file a complaint with the Commission. In a case alleging discrimination in employment (i.e., under sections 7 and 10), that "person" is the employer. Based on the facts in this complaint, Mr. Hercegljic's employer at the time of the alleged discrimination was GTL, a corporation that continues to exist. Mr. Bradshaw has not demonstrated how a transfer in ownership of the corporation extinguishes GTL's liability for any alleged discrimination that occurred prior to the change in ownership. The Share Purchase Agreement strongly suggests the opposite.

[21] Mr. Bradshaw had the burden to show that GTL, the Complainant's employer when he was fired, was not the proper responding party in this case. He did not demonstrate that in his submissions. Because of this, GTL was and remains the proper respondent in this case.

VI. ORDER

[22] The motion is dismissed. Case management will resume with GTL as the respondent.

Signed by

Ashley Bressette-Martinez
Tribunal Member

Ottawa, Ontario
May 9, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3059-24

Style of Cause: Mirsad Hercegljic v. Gladstone Transfer Ltd.

Ruling of the Tribunal Dated: May 9, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Mirsad Hercegljic, Self-represented

Christine Singh, for the Canadian Human Rights Commission

Grant Bradshaw, for the Respondent

Peter Halamandaris, Counsel for Scott Kinley